

NOV 21 2003

General Order 03-23

DAVID J. MALAND, CLERK

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

DEPUTY *Peggy Thompson*

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-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:

- (A) In a civil case, the initial papers, including the complaint, the civil cover sheet, the issuance and service of the summons and the notice of removal;
- (B) In a criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; petitions for revocation of probation or supervised release; affidavits in support of search and arrest warrants, pen registers, trap and trace requests, wiretaps and other documentation related to these types of applications; and other matters filed ex parte in connection with ongoing criminal investigations;
- (C) filing from pro se litigants (prisoner and non-prisoner);
- (D) filings to be kept under seal;
- (E) consents to proceed before a magistrate judge;
- (F) proof of service of the initial papers in a civil case;
- (G) Fed.R.Crim.P. 20 and Fed.R.Crim.P. 40 papers received from another court; and
- (H) official administrative records or transcripts of prior court or administrative proceedings required to be filed by law, rule or local rule.

(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.

- (B) If the court permits, a party to a pending proceeding who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.
- (C) A Filing User may apply to the court for permission to withdraw from participation in the Electronic Filing System, for good cause shown.

(3) **Significance of Electronic Filing.**

- (A) Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes, and constitutes entry of the document on the docket kept by the clerk. Receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.
- (B) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.
- (C) Service is deemed completed at the date and time stated on the Notice of Electronic Filing from the court, except that documents filed electronically after 5 p.m. local time of the recipient shall be deemed served on the following day.
- (D) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

(4) **File Size Limitations.** No single electronic file, whether containing a document or an attachment, may exceed forty (40) pages in length. Documents and/or attachments in excess of forty pages must be divided into multiple files and accurately described to the court.

(5) **Signatures.** The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. The name of the Filing User under whose log-in and password the document is submitted must be preceded by either an image of the Filing User's signature or an "/s/" typed in the space where the signature

would otherwise appear.

- (6) **Attachments and Exhibits.** Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. See Section (4), "File Size Limitations," above; Local Rule CV-7(b), 56(d) (requirements for documents attached to motions).
 - (7) **Sealed Documents.** Documents requested or authorized to be filed under seal or filed ex parte shall be filed in paper form with the court. Counsel is responsible for serving documents under seal to opposing counsel, and may do so in electronic form.
 - (8) **Entry of Court Orders.**
 - (A) All orders, decrees, judgments, and proceedings of the court will be filed electronically by the court or court personnel in accordance with these rules, which will constitute entry on the docket kept by the clerk. Any order filed electronically has the same force and effect as if the judge had signed a paper copy of the order and it had been entered on the docket in a conventional manner.
 - (B) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.
 - (9) **Technical Failures.** A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.
- (b) **Filing by Paper.** Where filing by paper is permitted, the original and one copy of pleadings, motions and other papers shall be filed with the clerk (but see Local Rule CV-4(b) (two copies of summons and complaint required when serving Texas Secretary of State); Fed.R.Civ.P. 4(i) (extra copies required when serving the United States as a party); and Fed. R. Civ. P. 5(d) (discovery or disclosure materials under Fed.R.Civ.P. 26(a)(1) and (a)(2), including notices of depositions, are not filed unless by order of the court)).
- (1) **Filing by After-Hours Depository.** The court maintains after-hours document depositories at the courthouses in Beaumont, Lufkin, Tyler, Marshall, Sherman and Texarkana. Where filing by paper is permitted, any pleadings or other documents that are marked received using the electronic time stamp contained in the depository and then placed in the box will be entered on the docket as of the time and date marked as received to the depository.
 - (2) **Filing Papers in Proper Division.** Where filing by paper is permitted, parties are encouraged to file pleadings, motions and other papers in the division in which the case is pending. If pleadings, motions or other papers are filed in another division, a stamped, addressed envelope for mailing to the proper division must be included.

(c) **Filing by Facsimile.** Filing by facsimile will only be allowed in situations determined by the court to be of an emergency nature or other compelling circumstance. The clerk shall not accept documents transmitted by facsimile equipment unless prior authorization has been obtained from the judge or magistrate judge to whom the case has been assigned, or at that judge's personal direction, with the exception of emergency pleadings in capital offense cases.

(1) Authorized facsimile transmissions must be faxed directly to the clerk's office. Additionally,

(A) the party filing the document must mail or otherwise submit the original signed document to the clerk on the same day it is sent via facsimile, along with any reasonable fee established by the clerk; and

(B) absent express judicial permission, documents filed by facsimile transmission shall not exceed 15 pages in length.

Failure to comply with these requirements may result in the pleading being stricken from the record.

(2) A facsimile pleading is deemed to be filed as of the date it is received by the court. The filed facsimile shall have the same force and effect as the original. The clerk shall assign the original signed pleading the same document number as the facsimile pleading.

(3) The clerk shall not accept for facsimile filing an original complaint, a removal from state court, or any other document constituting a new action.

(d) **Filing of Sealed Documents.** Documents may not be filed under seal, unless authorized by the court.

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

(f) **Service by Facsimile Authorized.** Parties may serve copies of pleadings and other case related documents to other parties by facsimile in lieu of service and notice by mail. Such service is deemed complete as of the telephonic transfer to the recipient's facsimile machine or telecopier. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

Comment

Fed. R. Civ. P. 83(a)(1) requires local rules to "conform to any uniform numbering system" prescribed by the Judicial Conference. Since Fed. R. Civ. P. 5(e) provides the court with authority to permit filing, signing and verification of documents by electronic means by

local rule, the provisions for electronic filing in the Local Rules are included in Local Rule CV-5.

Since the adoption of electronic filing represents a substantial change in local practice, and creates an additional parallel system of filing, Local Rule CV-5 has been reorganized to call practitioners' attention to the electronic filing requirement as the primary of the several existing methods of filing documents with the court. For purposes of clarity, the "redlining" above reflects changes in the language of the rule, but not the reorganization of provisions.

The court intends to allot sufficient time (i.e., several months) for training of attorneys and their support staff prior to implementation of electronic filing.

One substantive change not dealing with electronic filing is made, and that is a local rule that defines whether leave of court is required to file a document under seal. Current practice varies, and the court agrees with the rules committee that a definitive rule would be of assistance to practitioners.

2. LOCAL RULE CV-7: MOTION PRACTICE

(b) **Documents Supporting Motions.** When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. It is strongly recommended that any attached materials should have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted material in its proper context. Only relevant, cited- to excerpts of attached materials should be attached to the motion or the response.

* * *

(h) **Certificates of Conference.** Except as specified below, all motions must be accompanied by a "certificate of conference" at the end of the motion following the certificate of service.. The certificate must state (1) that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention, and (2) whether the motion is opposed or unopposed. Certificates of conference are not required with pro se litigants (prisoner or non-prisoner), or with the following motions:

- (1) to dismiss;
- (2) for judgment on the pleadings;
- (3) for summary judgment;
- (4) motions *in limine*;
- (5) for judgment as a matter of law;
- (6) for judgment of acquittal in criminal cases or motions to suppress in criminal cases;
- (6 7) for new trial; and

(7 8) any motion captioned as "joint", "agreed " or "unopposed."

Comment

The change to electronic filing means that virtually all materials attached to a motion or response will have been scanned in or converted from a word processing document to .pdf format. Since highlighting within a scanned document requires some degree of expertise in operating document viewing software, the court now "strongly encourages" rather than requires, the highlighting of cited materials, and offers counsel the option of underlining.

The rule adjustment to Local Rule CV-7(h) was recommended by Judge Ron Clark. A motion for judgment of acquittal used to be in this list of motions excepted from the certificate of conference rule, but was erroneously removed because it applied to criminal, rather than civil, cases. As Judge Clark observed, motion practice in criminal cases is governed by Local Rule CV-7.

**3. LOCAL RULE CV-11 Signing of Pleadings, Motions and Other Papers
Attorney-in-charge.**

* * * * *

- (c) **Signing the Pleadings.** Every document filed must be signed by, ~~or by permission of,~~ the attorney-in-charge, or by an attorney who has the permission of the attorney-in-charge. Requests for postponement of the trial shall be signed by the attorney of record and the party making the request.

Comment

This revision was suggested by Judge Don Bush to improve clarity and ensure that persons who are signing documents with the permission of the attorney-in-charge are attorneys. Although the court does not want non-attorneys signing documents without the knowledge of counsel, there will be instances under the new electronic filing rules where members of an attorney's support staff electronically affix an attorney's signature to documents being filed and send them to the court with the knowledge and permission of the attorney.

4. LOCAL RULE CV-56: SUMMARY JUDGMENT

- (d) As used within this rule, "proper summary judgment evidence" means excerpted copies of pleadings, depositions, answers to interrogatories, admissions, affidavits, and other admissible evidence cited in the motion for summary judgment or the response thereto. The phrase "appropriate citations" means that any excerpted evidentiary materials that are attached to the motion or the response should be referred to by page and, if possible, by line. Counsel are strongly encouraged to highlight or underline the cited portions of any attached evidentiary materials should have the cited portions highlighted in the copy that are provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted page may be submitted if necessary to place the

highlighted material in its proper context. Only relevant, cited-to excerpts of evidentiary materials should be attached to the motion or the response.

Comment

For the same reason as the modification to Local Rule CV-7(b), the court now "strongly encourages," rather than requires, that attachments have the cited-to portions highlighted or underlined.

5. 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 purpose of this rule, which responds to a request by Judge Brown, is to provide the court with a provision in the local rules that can be called to the attention of pro se litigants to the effect that the court may require security for costs and potential sanctions from litigants who are found to be "vexatious." The court's authority in this area is clear to attorneys, but may not be so to pro se parties.

The new provision is based on provisions in the local rules for the Eastern District of California that explicitly set forth that court's authority to require security for costs in cases involving vexatious pro se litigants, as well as to enter any other orders the court deems necessary to control the conduct of a vexatious pro se litigant. The California rules adopt a state code of civil procedure provision that sets forth specific definitions of the conduct that confers "vexatious litigant" status, and limits the definition to pro se litigants. The court agrees with the rules committee that the decision as to what conduct by a pro se litigant meets the standard of "vexatious" can be left to the discretion of the court, as opposed to adopting a detailed definition along the lines of the California rule, but does believe that an explicit reference to such litigants as "pro se" is desirable in order to avoid unnecessary motion practice under this rule in cases where parties are represented by attorneys.

6. ~~LOCAL RULE CR-12 Pleadings and Motions Before Trial~~

~~Criminal defense attorneys must confer with the assistant U.S. attorney in a good faith~~

~~attempt to resolve pretrial disputes before filing a motion, and must certify to such a conference in the motion.~~

Comment

Judge Clark suggested that this rule be struck as overbroad and one-sided. Per Local Rules CV-7 and CR-47, attorneys in criminal cases have a general duty to confer on all motions except for those specified in Local Rule CV-7.

7. Appendix K Application to Proceed Pro Hac Vice

Appendix K

Revised: 7/1/03

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DIVISION
APPLICATION TO APPEAR PRO HAC VICE**

1. This application is being made for the following:

Case# _____

Style: _____

2. Applicant is representing the following party/ies:

3. Applicant was admitted to practice in _____ (state) on _____ (date).

4. Applicant is in good standing and is otherwise eligible to practice law before this court.

5. Applicant is not currently suspended or disbarred in any other court.

6. Applicant has/has not had an application for admission to practice before another court denied (please circle appropriate language). If so, give complete information on a separate page.

7. Applicant has/has not ever had the privilege to practice before another court suspended (please circle). If so, give complete information on a separate page.

8. Applicant has/has not been disciplined by a court or Bar Association or committee thereof that would reflect unfavorably upon applicant's conduct, competency or fitness as a member of the Bar (please circle). If so, give complete information on a separate page.

9. Describe in detail on a separate page any charges, arrests or convictions for criminal offense(s) filed against you. Omit minor traffic offenses.

~~6.~~ 10. There are no pending grievances or criminal matters pending against the applicant.

~~7.~~ 11. Applicant has been admitted to practice in the following courts:

~~8.~~ 12. Applicant has read and will comply with the Local Rules of the Eastern District of Texas, including Rule AT-3, the "Standards of Practice to be Observed by Attorneys."

~~9.~~ 13. Applicant has included the requisite \$25 fee (see Local Rule AT-1(d)).

~~10.~~ 14. Applicant understands that he/she is being admitted for the limited purpose of appearing in the case specified above only.

Application Oath:

I, _____ do solemnly swear (or affirm) that

the above information is true; that I will discharge the duties of attorney and counselor of this court faithfully; that I will demean myself uprightly under the law and the highest ethics of our profession; and that I will support and defend the Constitution of the United States.

Date _____
Signature _____
Name (please print) _____
State Bar Number _____
Firm Name: _____
Address/P.O. Box: _____
City/State/Zip: _____
Telephone #: _____
Fax #: _____
E-mail Address: _____

Applicant is authorized to enter an appearance as counsel for the party/parties listed above. This application has been approved for the court this ___ day of _____, 20__.

David J. Maland, Clerk
U.S. District Court, Eastern District of Texas

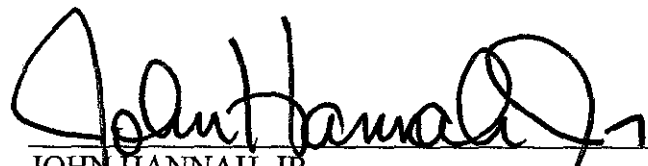
By _____
Deputy Clerk

Comment

The revision, suggested by Judge Bush, adds information that is currently on the regular Attorney Admission Application Form. The court agrees with Judge Bush that the same language ought to be included on the Application for Permission to Appear Pro Hac Vice.

Signed this 21st day of November, 2003.

FOR THE COURT:


JOHN HANNAH, JR.

¹New language appears in underlined text; deleted language appears in ~~strikeout~~ text. For the reader's convenience, commentary that explains the reason for each amendment is included. The court wishes to thank the attorney members of its Local Rules Advisory Committee, who proposed the amendments adopted here.