UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LOCAL RULES as of [December 1, 2019][1]

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[1] These rules include amendments through General Order [19-14], which was filed on [November 12th, 2019].

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LOCAL RULES

SECTION I: CIVIL RULES

LOCAL RULE CV-1 Scope and Purpose of Rules

(a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States, the Federal Rules of Civil Procedure, these local rules, and any orders entered by the court. These local rules shall be construed as consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit.

(b) **Admiralty Rules**. The Supplemental Rules for Certain Admiralty and Maritime Claims, as adopted by the Supreme Court of the United States, shall govern all admiralty and maritime actions in this court.

(c) **Patent Rules**. The "Rules of Practice for Patent Cases before the Eastern District of Texas" shall apply to all civil actions filed in or transferred to this court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim, or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid, or is unenforceable. Judges may opt out of this rule by entering an order.

LOCAL RULE CV-3 Commencement of Action

(a) **Habeas Corpus and 28 U.S.C. § 2255 Motions**. The clerk may require that petitions for a writ of habeas corpus and motions filed pursuant to 28 U.S.C. § 2255 be filed on a set of standardized forms approved by this court and supplied, upon request, by the clerk without cost to the petitioner. Petitioners who do not proceed *in forma pauperis* must pay a $5.00 filing fee. *See* 28 U.S.C. § 1914(a). There is no filing fee for Section 2255 motions filed by prisoners in federal custody.

(b) **Page Limitation for Petitions for a Writ of Habeas Corpus and 28 U.S.C. § 2255 Motions**. Absent leave of court, 28 U.S.C. §§ 2241 and 2254 habeas corpus petitions and 28 U.S.C. § 2255 motions and the initial responsive pleadings thereto, shall not exceed thirty pages in non-death penalty cases, and one hundred pages in death penalty cases, excluding attachments. Replies and sur-replies, along with all other motions and responses thereto, shall not exceed fifteen pages in length in non-death penalty cases and thirty pages in length in death penalty cases, excluding attachments. Documents that exceed ten pages in length must include a table of contents and table of authorities, with page references. Tables and certificates of service and conference are not counted against the applicable page limit.

(c) **Motions for Stay of Execution**. A motion for stay of execution filed on behalf of a petitioner challenging a sentence of death must be filed at least seven days before the petitioner's scheduled execution date or recite good cause for any late filing.

(d) **Page Limitations in Civil Rights Lawsuits**. Absent leave of court, complaints and the initial responsive pleadings thereto filed in civil rights proceedings shall not exceed thirty pages, excluding attachments. Documents that exceed ten pages in length must include a table of contents and table of authorities, with page references. Tables and certificates of service and conference shall not counted against the applicable page limit.

LOCAL RULE CV-4 Complaint, Summons, and Return

(a) At the commencement of the action, counsel shall prepare and file the civil cover sheet, Form JS 44, along with the complaint. When filing a patent, trademark, or copyright case, counsel is also responsible for electronically filing an AO Form 120 or 121 using the event Notice of Filing of Patent/Trademark Form (AO 120) or Notice of Filing of Copyright Form (AO 121).

If service of summons is not waived, the plaintiff must prepare and submit a summons to the clerk for each defendant to be served with a copy of the complaint. The clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.

(b) **Electronic Filing of Complaints**. Attorneys must electronically file a civil complaint upon opening a civil case in CM/ECF.

(c) On the complaint, all litigants shall type or print all party names contained in the case caption with the accurate capitalization and spacing for each party (e.g., Martha vanDerkloot, James De Borne). This procedure seeks to ensure that accurate computer party name searches can later be performed.

(d) Service of civil process shall not be executed by the United States Marshal except for government initiated process, extraordinary writ, or when ordered to do so by a judge. The party requesting service is responsible for preparing all process forms to be supplied by the clerk. When process is to be served by the United States Marshal, the party seeking service shall complete the required U.S. Marshal Form 285.

LOCAL RULE CV-5 Service and Filing of Pleadings and Other Documents

(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 criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; affidavits in support of search and arrest warrants, pen registers, trap and trace requests,

wiretaps, and other related documentation; and *ex parte* documents filed in connection with ongoing criminal investigations;

(B) Documents filed by *pro se* litigants (prisoner and non-prisoner);

(C) Official administrative records or transcripts of prior court or administrative proceedings from other courts or agencies that are required to be filed by law, rule, or local rule; and

(D) Sealed civil complaints (these documents should be filed with the clerk along with a motion to seal the case pursuant to submission instructions provided by the clerk's office). *See* Local Rule 5(a)(7)(A).

(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. Documents sent from the court will be deemed delivered if sent to the last known e-mail address given to the court.

(B) With court permission, a *pro se* litigant 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 "entered on" date and time stated on the Notice of Electronic Filing from the court.

(C) Service is deemed completed at the "entered on" date and time stated on the Notice of Electronic Filing from the court, except that documents filed electronically after 5:00 p.m. Central Time 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 Central Time 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 fifteen megabytes in size. Documents or attachments in excess of fifteen megabytes must be divided into multiple files and accurately described to the court. *See* Local Rule CV-7 (page requirements for motions and responses).

(5) **Signatures**. The user log-in and password required to submit documents to the Electronic Filing System serves 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. *See* Local Rule CV-11(b) ("Signing the Pleadings").

(6) **Attachments and Exhibits**. Filing Users must submit and describe each exhibit or attachment with specificity as a separate PDF document, unless the court permits conventional filing. *See* Local Rules CV-5(a)(4) ("File Size Limitations"), CV-7(b) ("Documents Supporting Motions"), and CV-56(d) ("Proper Summary Judgment Evidence"). Non-documentary exhibits to motions (e.g., CD-ROM disks) should be filed with the clerk's office with a copy to the presiding judge.

(7) **Sealed Documents**.

(A) All sealed documents must state "Filed Under Seal" at the top of the document.

(B) 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.

(C) A motion to file document(s) under seal must be filed separately and immediately before the document(s) sought to be sealed. If the motion to seal 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 document will be struck. A motion to seal that is filed as a sealed document does not need to include the certification specified in Section (B) above. *See* Local Rule CR-49(b) (additional rules regarding the filing of sealed documents in criminal cases).

(D) Documents requested or authorized to be filed under seal or *ex parte* shall be filed in electronic form. Service in "electronic form" shall be of documents identical in all respects to the documents(s) filed with the court; service copies shall not include encryption, password security, or other extra steps to open or access unless the same are found in the document as filed. 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. Counsel is also responsible 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 copy of the sealed order to each party's lead attorney who is responsible for distributing the order to all other counsel of record for that party. *See* Local Rule CV-11.

(E) Except as otherwise provided by Local Rule CR-49, a party filing a document under seal must publicly file a version of that document with the confidential information redacted within two days, unless the entire document is confidential information. For purposes of this rule, "confidential information" is information that the filing party contends is confidential or proprietary in a pending motion to file under seal; information that has been designated as confidential or proprietary under a protective order or non-disclosure agreement; or information otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

(8) **Entry of Court Orders**.

(A) All orders, decrees, judgments, and court proceedings 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) **Paper Copies of Lengthy Documents**. Unless otherwise ordered by the presiding judge, if a document to be filed electronically exceeds ten pages in length, including

attachments, a paper copy of the filed document must be sent contemporaneously to the presiding judge's chambers. A copy of the "Notice of Electronic Filing" must be attached to the front of the paper copy of the filed document. The paper copy should be sent directly to the judge's chambers and not to the clerk's office. *See* Local Rule CV-10(b) (regarding tabs and dividers for voluminous documents). Judges may opt out of this rule by entering an order. Such orders can be found on the court's website, located at www.txed.uscourts.gov.

(10) **Technical Failures**. A technical failure does not relieve a party from exercising due diligence to timely file and serve documents. A Filing User whose filing is made untimely as the result of a technical failure of 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. 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.

(b) **Filing by Paper**. When filing by paper is permitted, the original pleadings, motions, and other papers shall be filed with the clerk.

(c) **Certificates of Service**. The certificate of service required by Fed. R. Civ. P. 5(d) shall indicate the date and method of service. Sealed documents in civil cases must indicate that the sealed document was promptly served by means other than the CM/ECF system (e.g., e-mail, conventional mail).

(d) **Service by Facsimile or Electronic Means Authorized**. Except with regard to *pro se* litigants that have not consented in writing to receiving service by electronic means, parties may serve copies of pleadings and other case related documents to other parties by facsimile or electronic means in lieu of service and notice by mail. Such service is deemed complete upon sending. Service after 5:00 p.m. Central Time shall be deemed served on the following day for purposes of calculating responsive deadlines.

(e) **Service of Documents Filed by *Pro Se* Litigants**. A document filed by a *pro se* litigant shall be deemed "served" for purposes of calculating deadlines under the Local Rules or Federal Rules of Civil Procedure on the date it is electronically docketed in the court's CM/ECF system.

LOCAL RULE CV-5.2 Privacy Protections for Filings Made with the Court

(a) **Electronic Filing of Transcripts by Court Reporters**. The following procedures apply to all court transcripts filed on or after May 19, 2008. The court reporter or transcriber shall electronically file all court transcripts,[2] including a completed version of the attached "Notice of Filing of Official Transcript." Upon request, the clerk shall make an electronic version of any transcript available for public inspection without charge at the clerk's office public terminal. *See* 28 U.S.C. § 753(b).

[2] Contract court reporters may either file court transcripts electronically in the CM/ECF database or submit an electronic PDF version of the transcript to the clerk, who will thereupon file it.

(b) **Availability of Transcripts of Court Proceedings**. Electronically-filed transcripts of court proceedings are subject to the following rules:

(1) A transcript provided to a court by a court reporter or transcriber will be available at the clerk's office for inspection for a period of ninety days after it is electronically filed with the clerk. During the ninety-day inspection period, access to the transcript in CM/ECF is limited to the following users: (a) court staff; (b) public terminal users; (c) attorneys of record or parties who have purchased the transcript from the court reporter or transcriber; and (d) other persons as directed by the court. During the ninety-day period, court staff may not copy or print transcripts for a requester and the transcript may not be printed from the public computer terminals in the clerk's office.

(2) During the ninety-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will also be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.

(3) Within seven days of the filing of the transcript in CM/ECF, each party wishing to redact a transcript must inform the court, by filing the attached "Notice of Intent to Request Redaction," of the party's intent to redact personal data identifiers from the transcript as required by Fed. R. Civ. P. 5.2. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not necessary.

(4) If redaction is requested, a party is to submit to the court reporter or transcriber and file with the court, within twenty-one days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal identifiers listed in Fed. R. Civ. P. 5.2. If an attorney wishes to redact additional information, he or she must make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion.

(5) The court reporter or transcriber must, within thirty-one days of the filing of the transcript, or longer if the court so orders, perform the requested redactions and file a redacted version of the transcript with the clerk. Redacted transcripts are subject to the same access restrictions as outlined above during the initial ninety days after the first transcript has been filed. The original unredacted electronic transcript shall be retained by the clerk as a restricted document.

(6) If, after the ninety-day period has ended, there are no redacted documents or motions linked to the transcript, the clerk will remove the public access restrictions and make the unredacted transcript available for inspection and copying in the

clerk's office and for download from the CM/ECF system.

(7) If, after the ninety-day period has ended, a redacted transcript has been filed with the court, the clerk will remove the access restrictions as appropriate and make the redacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system or from the court reporter or transcriber.

LOCAL RULE CV-6 Computation of Time

Deficient or Corrected Documents. When a document is corrected or re-filed by an attorney following a deficiency notice from the clerk's office (e.g., for a missing certificate of service or certificate of conference), the time for filing a response runs from service of the corrected or re-filed document, not the original document.

LOCAL RULE CV-7 Pleadings Allowed; Form of Motions and Other Documents

(a) **Generally**. All pleadings, motions, and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and shall be accompanied by a separate proposed order in searchable and editable PDF format for the judge's signature. Each pleading, motion, or response to a motion must be filed as a separate document, except for motions for alternative relief (e.g., a motion to dismiss or, alternatively, to transfer). 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 and shall not contain restrictions or security settings that prohibit copying, highlighting, or commenting. All other documents, including attachments and exhibits, should be in "searchable PDF" form whenever possible.

(1) **Case Dispositive Motions**. Case dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. *See* Local Rule CV-56 (regarding attachments to motions for summary judgment and responses thereto). Any reply or sur-reply to an opposed case dispositive motion filed pursuant to Section (f) of this rule shall not exceed ten pages, excluding attachments.

Case dispositive motions shall contain a statement of the issues to be decided by the court. Responses to case 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, responses to such motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or sur-reply brief to an opposed non-dispositive motion filed pursuant to Section (f) of this rule shall not exceed five pages, excluding attachments. Non-dispositive motions include, among others, motions to transfer venue, motions for partial summary judgment, and motions for new trial

pursuant to Fed. R. Civ. P. 59.

(3) **Total Page Limits for Summary Judgment Motions**. If a party files more than one summary judgment motion, the following additional limitations apply:

(A) A party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(B) A nonmovant's responses to a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(C) Reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments; and

(D) A nonmovant's sur-reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments.

(4) **Motions to Reconsider**. Motions to reconsider must specifically state the action and the docket sheet document number to be reconsidered in the title of the motion (e.g., "Motion to Reconsider Denial of Motion for Partial Summary Judgment (dkt # x)").

(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. The court strongly recommends that any attached materials 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 or underlined material in context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

(c) **Briefing Supporting Motions**. The motion and any briefing shall be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Briefing is an especially helpful aid to the judge in deciding motions to dismiss, motions for summary judgment, motions to remand, and post-trial motions.

(d) **Response and Briefing**. The response and any briefing shall be contained in one document. A party opposing a motion shall file the response, any briefing and supporting documents within the time period prescribed by Subsection (e) of this rule. A response shall be accompanied by a proposed order conforming to the requirements of Subsection (a) of this rule. Briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies. A party's failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.

(e) **Time to File Response**. A party opposing a motion has fourteen days (twenty-one days for

summary judgment motions) from the date the motion was served in which to file a response and any supporting documents, after which the court will consider the submitted motion for decision. Any party may separately move for an order of this court lengthening or shortening the response period.

(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 the issues raised in the response within seven days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within seven 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.

(g) **Oral Hearings**. A party may in a motion or a response specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.

(h) **"Meet and Confer" Requirement**. The "meet and confer" motions practice requirement imposed by this rule has two components, a substantive and a procedural component.

For opposed motions, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between an attorney for the movant and an attorney for the non-movant. In any discovery-related motion, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between the lead attorney and any local counsel for the movant and the lead attorney and any local counsel for the non-movant.

In the personal conference, the participants must give each other the opportunity to express his or her views concerning the disputes. The participants must also compare views and have a discussion in an attempt to resolve their differing views before coming to court. Such discussion requires a sincere effort in which the participants present the merits of their respective positions and meaningfully assess the relative strengths of each position.

In discovery-related matters, the discussion shall consider, among other things: (1) whether and to what extent the requested material would be admissible in a trial or is reasonably calculated to lead to the discovery of admissible evidence; (2) the burden and costs imposed on the responding party; (3) the possibility of cost-shifting or sharing; and (4) the expectations of the court in ensuring that parties fully cooperate in discovery of relevant information.

Except as otherwise provided by this rule, a request for court intervention is not appropriate until the participants have met and conferred, in good faith, and concluded, in good faith, that the discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. Good faith requires honesty in one's purpose to discuss meaningfully the dispute, freedom from intention to defraud or abuse the discovery process and faithfulness to one's obligation to secure information without court intervention. For opposed motions, correspondence, e-mails, and facsimile transmissions do not constitute compliance with the substantive component and are not evidence of good faith. Such materials, however,

may be used to show bad faith of the author.

An unreasonable failure to meet and confer violates Local Rule AT-3 and is grounds for disciplinary action. A party may file an opposed motion without the required conference only when the non-movant has acted in bad faith by failing to meet and confer.

The procedural requirement of the "meet and confer" rule is one of certification. It appears in Section (i) of this rule, entitled "Certificates of Conference."

(i) **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 complied with the meet and confer requirement in Local Rule CV-7(h); and (2) whether the motion is opposed or unopposed. Opposed motions shall include a statement in the certificate of conference, signed by the movant's attorney, that the personal conference or conferences required by this rule have been conducted or were attempted, the date and manner of such conference(s) or attempts, the names of the participants in the conference(s), an explanation of why no agreement could be reached, and a statement that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. In discovery-related motions, the certificate of conference shall be signed by the lead attorney and any local counsel. In situations involving an unreasonable failure to meet and confer, the movant shall set forth in the certificate of conference the facts believed to constitute bad faith.
Neither the "meet and confer" nor the "certificate of conference" requirements are applicable to *pro se* litigants (prisoner or non-prisoner) or to the following motions:

(1) to dismiss;

(2) for judgment on the pleadings;

(3) for summary judgment, including motions for partial summary judgment;

(4) for judgment as a matter of law;

(5) for new trial;

(6) issuance of letters rogatory;

(7) objections to report and recommendations of magistrate judges or special masters;

(8) for reconsideration;

(9) for sanctions under Fed. R. Civ. P. 11, provided the requirements of Fed. R. Civ. P. 11(c)(2) have been met;

(10) for writs of garnishment;

(11) any enforcement remedy provided for by the Federal Debt Collection Procedure Act, 28 U.S.C. § 3101, *et seq*.; and

(12) any motion that is joined by, agreed to, or unopposed by, all the parties.

(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* Local Rule CV-81(d).

(k) **Motions for Leave to File**. Motions for leave to file a document should be filed separately and immediately before the document for which leave is sought. 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 document will be struck or, in the case of motions to file a document exceeding page limitations, the excess pages and attachments cited only therein will not be considered by the court. The time for filing any responsive documents will run from the date of the order on the motion for leave.

(l) **Emergency Motions**. Emergency motions are only those necessary to avoid imminent, irreparable harm such that a motion pursuant to LOCAL RULE CV-7(e) to shorten the period for a response is inadequate. Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word "emergency;" (2) the motion is electronically filed using the CM/ECF drop down menu option entitled "emergency;" (3) the motion clearly states the alleged imminent, irreparable harm and the circumstances making proceeding under LOCAL RULE CV-7(e) inadequate; and (4) the chambers of the presiding judge is notified, either by telephone, e-mail, or fax, that an emergency motion has been filed.

(m) **Motions *in Limine***. Motions *in limine* should be contained within a single document subject to the page limitations of Local Rule CV-7(a)(2) for non-dispositive motions.

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) 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 it (e.g., Defendant John Doe's Answer; Defendant John Doe's Motion to Dismiss under Rule 12(b)(6)). *See* Local Rule CV-38(a) (cases involving jury demands); *see also* Local Rule CV-7(a) (each motion must be filed as a separate document, except when the motion concerns a request for alternative relief);

(3) be signed by the lead attorney 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; and

(5) be double spaced and in a font no smaller than 12-point type.

(b) **Tabs and Dividers**. When filed by paper, original documents offered for filing shall not

include tabs or dividers. The copy of the original that is required to be filed for the court's use, if voluminous, should have dividers or tabs, as should all copies sent to opposing counsel. *See* Fed. R. Civ. P. 5(a).

(c) **Covers**. "Blue backs" and other covers are not to be submitted with paper filings.

(d) **Deficient Pleadings/Documents**. The clerk shall monitor documents for compliance with the federal and local rules as to format and form. If the document sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity, preferably within one day, to cure the perceived defect. If the perceived defect is not cured in a timely fashion, the clerk shall refer the matter to the appropriate district or magistrate judge for a ruling as to whether the documents should be made part of the record.

(e) **Hyperlinks**. Electronically filed documents may contain the following types of hyperlinks:

(1) Hyperlinks to other portions of the same document;

(2) Hyperlinks to CM/ECF that contains a source document for a citation;

(3) Hyperlinks to documents already filed in any CM/ECF database;

(4) Hyperlinks between documents that will be filed together at the same time;

(5) Hyperlinks that the clerk may approve in the future as technology advances.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

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

(a) **Lead Attorney**.

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

(2) **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.

(b) **Signing the Pleadings**. Every document filed must be signed by the lead attorney or by an attorney of record 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, the following information shall appear:

(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.

(c) **Withdrawal of Counsel**. Attorneys may withdraw from a case only by motion and order under conditions imposed by the court. When an Assistant United States Attorney enters an appearance in a case, another Assistant United States Attorney may replace the attorney by filing a notice of substitution that identifies the attorney being replaced. Unless the presiding judge otherwise directs, the notice effects the withdrawal of the attorney being replaced. Change of counsel will not be cause for delay.

(d) **Change of Address**. Notices will be sent only to an e-mail and/or mailing address on file. A *pro se* litigant must provide the court with a physical address (i.e., a post office box is not acceptable) and is responsible for keeping the clerk advised in writing of his or her current physical address. *Pro se* litigants must also advise the court of the case numbers of all pending cases in which they are participants in this district.

(e) **Request for Termination of Electronic Notice**. If an attorney no longer desires to receive electronic notification of filings in a particular case due to settlement or dismissal of his or her client, the attorney may file a request for termination of electronic notice.

(f) **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* Local Rule CV-65.1(b).

LOCAL RULE CV-12 Filing of Answers and Defenses

An attorney may request that the deadline be extended for a defendant to answer the complaint or file a motion under Fed. R. Civ. P. 12(b). Unless otherwise ordered by the court, where the requested extension: (1) is not opposed; and (2) is not more than thirty days and does not result in an overall extension of the defendant's deadline exceeding forty-five days, the request shall be by application to the clerk, not motion. The application shall be acted upon with dispatch by the clerk on the court's behalf, and the deadline to answer or otherwise respond is stayed pending action by the clerk.

LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure

(a) **No Excuses**. Absent a court order to the contrary, a party is not excused from responding to discovery because there are pending motions to dismiss, to remand, or to change venue. Parties asserting the defense of qualified immunity may submit a motion to limit discovery to those materials necessary to decide the issue of qualified immunity.

(b) **Disclosure of Expert Testimony**.

(1) When listing the cases in which the witness has testified as an expert, the disclosure shall include the styles of the cases, the courts in which the cases were pending, the cause numbers, and whether the testimony was in trial or by deposition.

(2) By order in the case, the judge may alter the type or form of disclosures to be made with respect to particular experts or categories of experts, such as treating physicians.

(c) **Notice of Disclosure**. The parties shall promptly file a notice with the court that the disclosures required under Fed. R. Civ. P. 26(a)(1) and (a)(2) have taken place.

(d) **Relevant to Any Party's Claim or Defense**. The following observations are provided for counsel's guidance in evaluating whether a particular piece of information is "relevant to any party's claim or defense:"

(1) it includes information that would not support the disclosing parties' contentions;

(2) it includes those persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;

(3) it is information that is likely to have an influence on or affect the outcome of a claim or defense;

(4) it is information that deserves to be considered in the preparation, evaluation, or trial of a claim or defense; and

(5) it is information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate, or try a claim or defense.

(e) **Discovery Hotline (903) 590-1198**. The court shall provide a judge on call during business hours to rule on discovery disputes and to enforce provisions of these rules. Counsel may contact the duty judge for that month by dialing the hotline number listed above for any case in the district and get a hearing on the record and ruling on the discovery dispute, including whether a particular discovery request falls within the applicable scope of discovery, or request to enforce or modify provisions of the rules as they relate to a particular case.

LOCAL RULE CV-30 Depositions Upon Oral Examination

In cases where there is a neutral non-party witness or a witness whom all parties must examine, the time limit shall be divided equally among plaintiffs and defendants. Depositions may be taken after 5:00 p.m., on weekends, or holidays with approval of a judge or by agreement of counsel. Unless permitted by Fed. R. Civ. P. 30(c)(2), a party may not instruct a deponent not to answer a question. Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, nonresponsive." These objections are waived if not stated as phrased during the oral deposition.

All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived.

LOCAL RULE CV-34 Production of Documents and Things

Authorizations. At any time after the parties have conferred as required by Fed. R. Civ. P. 26(f), a party may request medical records, wage and earning records, or Social Security Administration records of another party as follows:

(a) Where a party's physical or mental condition is at issue, that party shall provide to the opposing counsel either the party's medical records or a signed authorization so that records of health care providers which are relevant to injuries and damages claimed may be obtained. If additional records are desired, the requesting party must show the need for them.

(b) Where lost earnings, lost earning capacity, or back pay is at issue, the party making such claims shall furnish signed authorizations to the opposing party's counsel so that wage and earning records of past and present employers and the Social Security Administration records may be obtained.

(c) Copies of any records obtained with authorizations provided pursuant to Sections (1) or (2) above shall be promptly furnished to that party's counsel. Records obtained shall remain confidential. The attorney obtaining such records shall limit their disclosure to the attorney's client (or, in the case of an entity, those employees or officers of the entity necessary to prepare the defense), the attorney's own staff, and consulting and testifying experts who may review the records in connection with formulating their opinions in the case.

LOCAL RULE CV-38 Right to a Jury Trial; Demand

(a) **Jury Demand**. A party demanding trial by jury pursuant to Fed. R. Civ. P. 38(b) is encouraged to do so by electronically filing a separate document styled as a "jury demand." If the jury demand is included in a pleading, that pleading must bear the word "jury" at the top, immediately below the case number. *See* Fed. R. Civ. P. 38(b)(1).

(b) **Taxation of Jury Costs for Late Settlement**. Except for good cause shown, whenever the settlement of an action tried by a jury causes a trial to be postponed, canceled, or terminated before a verdict, all juror costs, including attendance fees, mileage, and subsistence, may be imposed upon the parties unless counsel has notified the court and the clerk's office of the settlement at least one day prior to the day on which the trial is scheduled to begin. The costs shall be assessed equally against the parties and their counsel unless otherwise ordered by the court.

LOCAL RULE CV-42 Consolidation; Separate Trials Consolidation of Actions.

(a) **Duty to Notify Court of Collateral Proceedings and Re-filed Cases**. Whenever a civil matter commenced in or removed to the court involves subject matter that either comprises

all or a material part of the subject matter or operative facts of another action, whether civil or criminal, then pending before this or another court or administrative agency, or previously dismissed or decided by this court, counsel for the filing party shall identify the collateral proceedings or re-filed case(s) on the civil cover sheet filed in this court. The duty to notify the court and opposing counsel of any collateral proceeding continues throughout the pendency of the action.

(b) **Consolidation—Multiple Judges Involved**. Upon the assignment of related actions to two or more different judges with the district, the affected judges may, in their discretion, agree to assign the related actions to one judge.

LOCAL RULE CV-43 Taking of Testimony

Interpreters in Civil Cases Not Instituted by the United States. The presiding judge shall approve the utilization of interpreters in all civil cases not instituted by the United States. Absent a judicial order to the contrary, the presiding judge shall encourage the use of certified interpreters, or when no certified interpreter is reasonably available, "otherwise qualified" interpreters. *See* 28 U.S.C. § 1827(b). The presiding judge may approve the use of an interpreter who is not certified or "otherwise qualified" if no certified or "otherwise qualified" interpreter is reasonably available. Upon request, the clerk shall make lists of certified and otherwise qualified interpreters available to parties.

LOCAL RULE CV-47 Selecting Jurors

Communication with Jurors.

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

(b) After a verdict is rendered, an attorney must obtain leave of court to converse with members of the jury.

LOCAL RULE CV-50 Judgment as a Matter of Law in a Jury Trial

Total Page Limits for Motions for Judgment as a Matter of Law. The total page limits imposed by Local Rule CV-7(a)(3) on motions for summary judgment shall also apply to motions for judgment as a matter of law pursuant to Fed. R. Civ. P. 50.

LOCAL RULE CV-54 Judgments; Costs

(a) A party awarded costs by final judgment or by judgment that a presiding judge directs be entered as final under Fed. R. Civ. P. 54(b) must apply to the clerk for taxation of such costs by filing a bill of costs. Unless otherwise provided by statute or by an order of the presiding judge, the bill of costs must be filed with the clerk and served on any party entitled to such service no later than fourteen days after the clerk enters the judgment on the docket.

(b) **Procedure for Contested Bill of Costs**. Before filing a bill of costs, a party must:

(1) submit the proposed bill of costs to opposing counsel for review in light of the applicable law; and

(2) if there are any areas of disagreement, meet and confer with opposing counsel in an effort to submit an agreed bill of costs to the court. If the parties have a legitimate dispute on which they cannot agree, the parties have the option of filing either (A) a joint motion indicating the areas of agreement and the areas of disagreement to be resolved by the court or (B) a motion by the party requesting costs indicating the areas of agreement and the areas of disagreement to be resolved by the court, to which the opposing party may file a response. Either type of motion must contain a certificate confirming compliance with the conference requirements of this rule.

LOCAL RULE CV-56 Summary Judgment

Procedure.

(a) **Motion**. Any motion for summary judgment must include: (1) a statement of the issues to be decided by the court; and (2) a "Statement of Undisputed Material Facts." If the movant relies upon evidence to support its motion, the motion should include appropriate citations to proper summary judgment evidence as set forth below. Proper summary judgment evidence should be attached to the motion in accordance with Section (d) of this rule.

(b) **Response**. Any response to a motion for summary judgment must include: (1) a response to the statement of issues; and (2) a response to the "Statement of Undisputed Material Facts." The responsive brief should be supported by appropriate citations to proper summary judgment evidence as set forth below. Proper summary judgment evidence should be attached in accordance with Section (d) of this rule.

(c) **Ruling**. In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the responsive brief filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to unearth an undesignated genuine issue of material fact.

(d) **Proper summary judgment evidence**. As used within this rule, "proper summary judgment evidence" means excerpted copies of pleadings, depositions, documents, electronically stored information, answers to interrogatories, admissions, affidavits or declarations, stipulations (including those made for purposes of the motion only), and other admissible evidence cited in the motion for summary judgment or the response thereto. "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 portion of any attached evidentiary materials, 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 context. Only relevant, cited-to excerpts of evidentiary materials should be attached to the motion or the response.

LOCAL RULE CV-62 Stay of Proceedings to Enforce a Judgment

(a) **Bond or Other Security**. Unless otherwise ordered by the presiding judge, a bond or other security staying execution of a money judgment shall be in the amount of the judgment, plus 20% of that amount to cover interest and any award of damages for delay, plus $250.00 to cover costs. The parties may waive the requirement of a bond or other security by stipulation.

The bond shall:

(1) confirm whether the security provider is on the Treasury Department's list of certified companies, unless the court orders otherwise (a link to this list may be found on the court's website); and

(2) confirm the underwriting limitation, if applicable for the type of security.

(b) **Electronic Filing Requirement for Bonds**. When a bond or other security is posted for any reason, it must be electronically filed in the case by the posting party. The paper original of the security shall be retained by the posting party unless otherwise directed by the court.

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 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 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 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 randomly reassigned and transferred 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 or she recused in or was disqualified in. In instances where each judge in a two-judge or a multi-judge division recuses himself or herself 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 judges in the district recuse themselves or are disqualified to preside over a particular civil or criminal action or matter, the clerk shall, without delay, so certify to the chief judge of the United States Court of Appeals for the Fifth Circuit, in order that he may re-assign such action or matter to a suitable judge.

(d) **Recusal When Former Judge of this District Appears as Counsel**. For a period of one year after the retirement or resignation of a former federal judge of this district, the judges of this court shall recuse themselves in any case in which the former colleague appears as counsel. *See* 28 U.S.C. § 455; Committee on Codes of Conduct Advisory Opinion No. 70.

LOCAL RULE CV-65 Injunctions

An application for a temporary restraining order or for a preliminary injunction shall be made on an instrument separate from the complaint.

LOCAL RULE CV-65.1 Security; Proceedings Against Sureties

(a) **No Attorneys, Clerks, or Marshals as Sureties**. No attorney, clerk, or marshal, or 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 an 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.

LOCAL RULE CV-72 Magistrate Judges

(a) **Powers and Duties of a United States Magistrate Judge in Civil Cases**. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(b) **Objections to Non-dispositive Matters — 28 U.S.C. § 636(b)(1)(A)**. An objection to a magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. A party may respond to another party's objections within fourteen days after being served with a copy; however, the court need not await the filing of a response before ruling on an objection. No further briefing is allowed absent leave of court.

(c) **Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B)**. Objections to reports and recommendations and any response thereto shall not exceed eight pages. No further briefing is allowed absent leave of court.

(d) **Assignment of Matters to Magistrate Judges**. The method for assignment of duties to a

magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.

LOCAL RULE CV-77 District Courts and Clerks

Notice of Orders, Judgments, and Other Filings. The clerk may serve and give notice of orders, judgments, and other filings by e-mail in lieu of service and notice by conventional mail to any person who has signed a filed pleading or document and provided an e-mail address with his/her pleadings as specified in Local Rule CV-11(b)(1)(E). Any other attorney who wishes to receive notice of judicial orders, judgments, and other filings must file a notice of appearance of counsel with the court.

By providing the court with an e-mail address, the party submitting the pleadings is deemed to have consented to receive service and notice of judicial orders and judgments from the clerk by e-mail. Lead attorneys who wish to be excluded from receiving judicial notices by e-mail may do so by filing a motion with the court; non-lead attorneys who wish to be excluded from e-mail noticing may do so by filing a notice with the court.

Notice of judicial orders, judgments, and other filings is complete when the clerk obtains electronic confirmation of the receipt of the transmission. Notice by e-mail by the clerk that occurs after 5:00 p.m. on any day is deemed effective as of the following day.

LOCAL RULE CV-79 Records Kept by the Clerk

(a) **Submission of Hearing/Trial Exhibits**.

(1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without a court order. The clerk shall return to the party any physical exhibits not complying with this rule.

(2) Exhibits shall be properly marked but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. Additional copies of exhibits may be submitted in binders for the court's use.

(3) The parties shall provide letter-sized copies of any documentary, physical, or

oversized exhibit to the court prior to the conclusion of a hearing/trial. At the conclusion of a hearing/trial, the parties shall provide the courtroom deputy with PDF copies of all exhibits that were admitted by the court, unless otherwise ordered. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

(b) **Hazardous Documents or Items Sent to the Court**. Prisoners and other litigants shall not send to this court (including the district clerk, any judges, and any other court agency) documents or items that constitute a health hazard as defined below:

(1) The clerk is authorized to routinely and immediately dispose of, without seeking a judge's permission, any papers or items sent to the court by prisoners or other litigants that are smeared with or contain blood, hair, food, feces, urine, or other body fluids. Although "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice," Fed. R. Civ. P. 5(d), papers or other items containing or smeared with excrement or body fluids are excepted from this rule on the ground that they constitute a health hazard and can be refused by the clerk for that reason, which is a reason other than improper form.

(2) In the event the clerk receives weapons or drugs that are intended to be filed as exhibits, the clerk shall notify the judge assigned to the case of that fact, or in the event that no case has been filed, the chief judge.

(3) The clerk shall maintain a log of the items that are disposed of pursuant to General Order 96-6. The log shall contain the case number and style, if any, the name of the prisoner or litigant who sent the offending materials, and a brief description of the item disposed of. The clerk also shall notify the prisoner/litigant and, if applicable, the warden or other supervising official of the appropriate correctional facility that the item in question was destroyed and that sanctions may be imposed if the prisoner continues to forward papers, items, or physical exhibits in violation of General Order 96-6.

LOCAL RULE CV-81 Removed Actions

Parties removing cases from state court to federal court shall comply with the following:

(a) File with the clerk a notice of removal which reflects the style of the case exactly as it was styled in state court;

(b) If a jury was requested in state court, the removed action will be placed on the jury docket

of this court provided the removing party or parties file a separate jury demand pursuant to Local Rule CV-38(a);

(c) The removing party or parties shall furnish to the clerk the following information at the time of removal:

(1) a list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (e.g., pending, dismissed);

(2) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. § 1446(a);

(3) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and party or parties represented by that attorney;

(4) a record of which parties have requested jury trial (this information is in addition to filing a separate jury demand pursuant to Local Rule CV-38(a)); and

(5) the name and address of the court from which the case was removed.

(d) Any motions pending in state court will be considered moot at the time of removal unless they are re-urged in this court.

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**. Absent an order to the contrary, no sooner than the twenty-first day following an order of the court transferring or remanding a case, the clerk shall 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 and docket sheet directing such action; and (2) all pleadings and other 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 for 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.

(c) **Standing Orders**. Any standing order adopted by a judge pursuant to Fed. R. Civ. P. 83(b) must conform to any uniform numbering system prescribed by the Judicial Conference of the United States and must be filed with the clerk. The court will periodically review all standing orders for compliance with Rule 83(b) and for possible inclusion in the local rules. This subsection does not apply to provisions in scheduling or other case-specific orders.

(d) **Courtroom Attire and Conduct**. All persons present in a courtroom where a trial, hearing, or other proceeding is in progress must dress and conduct themselves in a manner demonstrating respect for the court. The presiding judge has discretion to establish appropriate standards of dress and conduct.

(e) **Alternative Dispute Resolution**. – Consistent with 28 U.S.C. § 651, the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, is authorized. Litigants in all civil actions shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. This consideration shall include, but is not limited to, mediation as provided in the Court-Annexed Mediation Plan set forth on the court's website (per General Order 14-06) which is incorporated herein by reference.

SECTION II: CRIMINAL RULES

LOCAL RULE CR-1 Scope

The rules of procedure in any criminal proceeding in this court are those prescribed by the laws of the United States, the Federal Rules of Criminal Procedure, these local rules, and any orders entered by the court. These rules shall be construed as consistent with acts of Congress and rules of practice and procedure prescribed by the Supreme Court of the United States and the United States Court of Appeals for the Fifth Circuit.

LOCAL RULE CR-6 The Grand Jury

(a) **Selection of Grand Jurors**. Grand jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statute and rule.

(b) **Grand Jury Subpoenas**. Sealed grand jury subpoenas shall be kept by the clerk for three years from the date the witness is ordered to appear. After that time, the clerk may destroy the subpoenas.

(c) **Signature of the Grand Jury Foreperson**. The grand jury foreperson shall sign the indictment with initials rather than his or her whole name. The foreperson will continue to sign the concurrence of the grand jury using his or her whole name.

LOCAL RULE CR-10 Arraignments

In the interest of reducing delays and costs, judges and magistrate judges may conduct the arraignment at the same time as the post-indictment initial appearance.

LOCAL RULE CR-24 Trial Jurors

(a) **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, an attorney must obtain leave of court to converse with members of the jury.

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

LOCAL RULE CR-47 Motions

(a) **Form and Content of a Motion**. All motions and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and be accompanied by a separate proposed order for the judge's signature. The proposed order shall be endorsed with the style and cause number and shall not include a date or signature block. Dispositive motions—those which could, if granted,

result in the dismissal of an indictment or counts therein or the exclusion of evidence—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. All 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 whenever possible.

(1) **Page Limits**.

(A) **Dispositive Motions**. Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed ten pages, excluding attachments.

(B) **Non-dispositive Motions**. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed five pages, excluding attachments.

(2) **Briefing Supporting Motions and Responses**. The motion and any briefing shall be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Likewise, the response and any briefing shall be contained in one document. Such briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies.

(3) **Certificates of Conference**. Except as specified below, all motions must be accompanied by a "certificate of conference." It should be placed 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 of *pro se* litigants (prisoner or non-prisoner) or for the following motions:

(A) motions to dismiss;

(B) motions for judgment of acquittal;

(C) motions to suppress;

(D) motions for new trial;

(E) any motion that is joined, by, agreed to, or unopposed by all the parties;

(F) any motion permitted to be filed *ex parte*;

(G) objections to report and recommendations of magistrate judges;

(H) motions for reconsideration;

(I) dispositive motions; and

(J) any motion related to enforcement of a debt, including relief under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3101, *et seq.* and the All Writs Act, 28 U.S.C. § 1651.

(b) **Timing of a Motion**.

(1) **Responses**. A party opposing a motion has fourteen 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. Any party may separately move for a court order lengthening or shortening the period within which a response may be filed.

(2) **Reply Briefs and Sur-Replies**. 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 seven days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within seven 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.

(c) **Affidavit Supporting a Motion**. 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 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 or underlined material in context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

LOCAL RULE CR-49 Service and Filing

(a) **Generally**. All pleadings and documents submitted in criminal cases must conform to the filing, service, and format requirements contained in Local Rules CV-5, CV-10, and CV-11.

(1) **Defendant Number**. In multi-defendant cases, each defendant receives a "defendant number." The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, parties shall identify by name and number each defendant to whom a document applies.

(2) **Sealed Indictments**. In multi-defendant cases involving one or more sealed indictments, the government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) **Public Access to Criminal Case Documents Generally**. In order to serve the legal presumption of openness in criminal case proceedings, pleadings in this court are generally to be filed unsealed. Except for the documents listed in Section (c) of this rule, decisions as to whether to seal a particular pleading are made on a case-by-case basis by the court, with findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered.

(1) Absent specific court findings to the contrary, all documents other than those specifically listed in paragraph (c) below and those submitted with a motion to seal in accordance with Local Rules CV-5(a)(7) and CR-49(a) are to remain unsealed.

(c) **Authorization to Routinely Seal Particular Types of Criminal Case Documents**. Despite the general rule cited in Section (b) above, there is an overriding interest in routinely sealing certain types of criminal case documents, because public dissemination of the documents would substantially risk endangering the lives or safety of law enforcement officers, United States Marshals, agents, defendants, witnesses, cooperating informants, judges, court employees, defense counsel, prosecutors, or their respective family members, and could jeopardize continuing criminal investigations. The documents that trigger this overriding interest are:

(1) unexecuted summonses or warrants (e.g., search warrants, arrest warrants);

(2) pen register or a trap and trace device applications pursuant to either 18 U.S.C. § 3121 *et seq.* or 18 U.S.C. § 2516 *et seq.*;

(3) pretrial bail or presentence investigation reports and any addenda and objections thereto;

(4) the statements of reasons in the judgment of conviction;

(5) plea agreements,[3] which are governed by Section (d) below;

(6) addenda to plea agreements described in Section (e) below;

(7) motions for downward departure for substantial assistance, and responsive pleadings and orders granting or denying the same;

(8) motions pursuant to Section 5K1.1 of the United States Sentencing Guidelines, memoranda in support thereof, responsive pleadings and orders granting or denying the same;

(9) motions for reduction of sentence under Fed. R. Crim. P. 35(b), memoranda in support thereof, responsive pleadings and orders granting or denying the same;

[3] The plea agreement does not include the factual basis of the offense and stipulation or the elements of the offense, which are separate documents typically filed at the same time as the plea agreement.

(10) amended judgments pursuant to a grant of a Fed. R. Crim. P. 35(b) motion; and

(11) orders restoring federal benefits filed in conjunction with item 10 above.

The documents listed above shall be filed under seal without need of a motion to seal or a certification by counsel. Other than plea agreements, the documents shall remain sealed unless otherwise ordered by the court.

(d) **Sealing and Unsealing of Plea Agreements**

(1) Until it is accepted by the court, a plea agreement is in the nature of an unaccepted offer of terms between parties. In addition to the findings of Section (c) above, making a plea agreement public before it has been accepted may lead to publicity that would tend to prejudice a defendant who decides to exercise his right to trial by making it more difficult to select jurors who have not formed an opinion about the case. Such publicity may also provide details of the case pertinent to co-defendants who have not pled, thus prejudicing them. Therefore, plea agreements shall be filed under seal.

(2) The plea agreement shall be unsealed when the terms and conditions of the plea agreement are accepted absent a further court order finding that there is an overriding policy interest in keeping that particular plea agreement sealed and providing findings specific enough that a reviewing court can determine whether the sealing or closure was properly entered. The routine unsealing of sealed plea agreements is intended to serve the right of public access to criminal case documents.

(e) **Sealed Addendums to Plea Agreements.** Every plea agreement in this court shall have an addendum that is sealed (see Section (c)(6) above). The addendum will either state "no provisions are included in this addendum," or it will contain specific provisions dealing with possible reductions in sentence in return for the defendant's substantial assistance to the government. This will allow each plea agreement to be unsealed upon sentencing without prejudicing or endangering a cooperating defendant or the defendant's family or other informants and defendants.

(f) In those instances where the court orders an entire criminal case sealed, case documents shall be e-mailed to the following addresses for filing by the relevant divisional clerk's office:

Beaumont	bmtcrimdocs@txed.uscourts.gov
Lufkin	lufcrimdocs@txed.uscourts.gov
Marshall	marcrimdocs@txed.uscourts.gov
Sherman	shrcrimdocs@txed.uscourts.gov
Texarkana	texcrimdocs@txed.uscourts.gov
Tyler	tylcrimdocs@txed.uscourts.gov

(g) Defendants proceeding *pro se* shall submit all sealed criminal case documents in paper format to the clerk's office for filing.

(h) Unless otherwise ordered by the presiding judge, counsel filing a document under seal must send a paper copy of that document to the presiding judge's chambers. The paper copy should be sent directly to the judge's chambers, not to the clerk's office.

LOCAL RULE CR-49.1 Privacy Protection for Filings Made with the Court

(a) **Electronic Filing of Transcripts by Court Reporters**. Any transcript of criminal proceedings in this court filed by a court reporter or transcriber shall be filed electronically, including a "Notice of Filing of Official Transcript." The clerk will post a "model notice" for the court reporter or transcriber's use on the court's web site. Upon request, the clerk shall make an electronic version of any unsealed transcript available for public inspection without charge at the clerk's office. *See* 28 U.S.C. § 753(b).

(b) **Availability of Transcripts of Court Proceedings**. Electronically-filed transcripts of criminal court proceedings are subject to the following rules:

(1) A transcript provided to a court by a court reporter or transcriber will be available at the clerk's office for inspection for a period of ninety days after it is electronically filed with the clerk. During the ninety-day inspection period, access to the transcript in CM/ECF is limited to the following users: (a) court staff; (b) public terminal users; (c) attorneys of record or parties who have purchased the transcript from the court reporter or transcriber; and (d) other persons as directed by the court. Court staff may not copy or print transcripts for a requester during the ninety-day inspection period.

(2) During the ninety-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will also be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and for other purposes.

(3) Within seven days of the filing of the transcript in CM/ECF, each party wishing to redact a transcript must inform the court, by filing the attached "Notice of Intent to Request Redaction," of the party's intent to redact personal data identifiers from the transcript as required by Fed. R. Crim. P. 49.1. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers is not necessary.

(4) If redaction is requested, a party is to submit to the court reporter or transcriber and file with the court, within twenty-one days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal identifiers listed in Fed. R. Crim. P. 49.1(a).

If an attorney wishes to redact additional information, he or she may make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion.

(5) The court reporter or transcriber must, within thirty-one days of the filing of the transcript, or longer if the court so orders, perform the requested redactions and file a redacted version of the transcript with the clerk. Redacted transcripts are subject to the same access restrictions as outlined above during the initial ninety days after the first transcript has been filed. The original unredacted electronic transcript shall be retained by the clerk as a restricted document.

(6) If, after the ninety-day period has ended, there are no redaction documents or motions linked to the transcript, the clerk will remove the public access restrictions and make the unredacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system.

(7) If, after the ninety-day period has ended, a redacted transcript has been filed with the court, the clerk will remove the access restrictions as appropriate and make the redacted transcript available for inspection and copying in the clerk's office and for download from the CM/ECF system or from the court reporter or transcriber.

LOCAL RULE CR-55 Records

(a) **Submission of Hearing/Trial Exhibits**. The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without a court order. The clerk shall return to the party any physical exhibits not complying with this rule. Exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. Additional copies of trial exhibits may be submitted in binders for the court's use.

(b) **Post-trial/hearing Exhibit Procedures**. The parties shall provide letter-sized copies of any documentary, physical, or oversized exhibit to the court prior to the conclusion of a hearing/trial. At the conclusion of a hearing/trial, the parties shall provide the courtroom deputy with PDF copies of all exhibits that were admitted by the court, unless otherwise ordered. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

LOCAL RULE CR-59 Matters Before a Magistrate Judge

(a) **Powers and Duties of a United States Magistrate Judge in Civil Cases**. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(b) **Objections to Non-dispositive Matters — 28 U.S.C. § 636(b)(1)(A)**. An objection to a magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. A party may respond to another party's objections within fourteen days after being served with a copy; however, the court need not await the filing of a response before ruling on an objection. No further briefing is

allowed absent leave of court.

(c) **Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B)**. Objections to reports and recommendations and any response thereto shall not exceed eight pages. No further briefing is allowed absent leave of court.

(d) **Assignment of Matters to Magistrate Judges**. The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.

SECTION III: ATTORNEYS

LOCAL RULE AT-1 Admission to Practice

(a) An attorney who has been admitted to practice before the Supreme Court of the United States, a United States Court of Appeals, a United States District Court, or the highest court of a state, is eligible for admission to the bar of this court. He or she must be of good moral and professional character and must be a member in good standing of the state and federal bars in which he or she is licensed.

(b) Each applicant shall file an application on a form prescribed by the court. If the applicant has previously been subject to disciplinary proceedings, full information about the proceedings, the charges, and the result must be given.

(1) A motion for admission made by a member in good standing of the State Bar of Texas or the bar of any United States District Court shall accompany the completed admission form. The movant must state that the applicant is competent to practice before this court and is of good personal and professional character.

(2) The applicant must state in the application that he or she has read Local Rule AT-3, the "Standards of Practice to be Observed by Attorneys," and the local rules of this court and that he or she will comply with the standards of practice adopted in Local Rule AT-3 and with the local rules.

(3) The applicant must provide with the application form an oath of admission signed in the presence of a notary public on a form prescribed by the court. The completed application for admission, motion for admission, and oath of admission shall be submitted to the court, along with the admission fee required by law and any other fee required by the court. Upon investigation of the fitness, competency, and qualifications of the applicant, the completed application form may be granted or denied by the clerk subject to the oversight of the chief judge.

(c) The clerk shall maintain a complete list of all attorneys who have been admitted to practice before the court.

(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 electronically an application to appear pro hac vice with the clerk. 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 is available on the court's website and must be signed by the applicant personally. Detailed instructions on how to e-file the application appear on the court's website, located at www.txed.uscourts.gov. Such application also shall be accompanied by a $100.00 local fee, which must be paid electronically. 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) **Federal Government Attorneys**. No bar admission fees shall be charged to attorneys who work for the United States government, including Assistant United States Attorneys, Assistant Federal Public Defenders, and CJA Panel attorneys. Bar admission fees cannot be waived for federal law clerks, however, as they do not appear in court on behalf of the United States but instead perform job duties that do not require admission to practice in the court. The clerk's office has no authority to waive bar admission fees for attorneys who work for state, county, or city governments.

LOCAL RULE AT-2 Attorney Discipline

(a) **Generally**. The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages customs and practices of this bar.

(b) **Disciplinary Action Initiated in Other Courts**.

(1) Except as otherwise provided in this subsection, a member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements, or voluntary resignation unrelated to a disciplinary proceeding or problem. This rule shall include, but is not limited to, instances where an attorney: (A) is disbarred, (B) is suspended, (C) is removed from the roll of active attorneys, (D) resigns in lieu of discipline, (E) has his or her pro hac vice status revoked as a result of misconduct, or (F) has any other discipline affecting his or her right to practice law imposed, by agreement or otherwise, as a result of the attorney's failure to adhere to any applicable standard of professional conduct.

(2) **Procedure.**

(A) If it appears that there exists a ground for discipline set forth in paragraph (b)(1) above, the clerk shall serve a notice and order upon the attorney concerned, such order to become effective thirty days after the date of service, imposing identical discipline in this district.

(B) Within twenty-one days of service of the notice and order upon the attorney, the attorney may file a motion for modification or revocation of the order. Any such motion must set forth with specificity the facts and principles relied upon by the attorney as showing good cause why a different disposition should be ordered by this court. The motion must also identify all cases currently pending in the Eastern District of Texas where the attorney has filed an appearance. For each matter, the motion should identify the attorney's client(s). The timely filing of such a motion will stay the effectiveness of the order until further order by this court.

(C) If the attorney concerned files a motion seeking modification or revocation of the order, the matter shall be assigned to the chief judge, or a judge designated by the chief judge.

(D) Discipline shall be imposed under this section unless the attorney concerned establishes that: (i) the procedure followed in the other jurisdiction deprived the attorney of due process, (ii) the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction, (iii) the imposition of the identical discipline would result in a grave injustice, (iv) the misconduct established by the other jurisdiction warrants substantially different discipline in this court, or (v) the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court.

(E) As soon as practicable, the assigned judge shall consider the attorney's motion for modification or revocation on written submission. If good cause is not established, the judge shall enter an order directing that the clerk of the court may proceed to impose discipline set forth in the order described in paragraph AT-2(b)(2)(A) above or take other such action as justice and this rule may require. If the judge determines it is appropriate to hold a hearing, the judge may direct such a hearing pursuant to paragraph (b)(3) below.

(3) **Hearing.**
If the judge determines that a hearing is appropriate, the concerned attorney shall have the right to counsel and at least fourteen days' notice of the date of the hearing. Prosecution of the reciprocal discipline may be conducted by an attorney specially appointed by the court. Costs of the prosecuting attorney and any fees allowed by the court shall be paid from the attorney admission fund.

(4) **Duty of Attorney to Report Discipline.**
A member of this bar who has lost the right to practice law before any state or federal court, either permanently or temporarily, must advise the clerk of that fact within thirty days of the effective date of the disciplinary action. For purposes of this rule, "disciplinary action" includes, but is not limited to, the circumstances set forth in paragraph AT-2(b)(1) above. The clerk will thereafter proceed in accordance with this rule. Absent excusable neglect, an attorney's failure to comply with this subsection shall waive that attorney's right to contest the imposition of reciprocal discipline.

(c) **Conviction of a Crime**. A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.

(d) **Disciplinary Action Initiated in this Court**.

(1) **Grounds for Disciplinary Action**. This court may, after an attorney has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any attorney:

(A) for conduct unbecoming a member of the bar;

(B) for failure to comply with these local rules or any other rule or order of this court;

(C) for unethical behavior;

(D) for inability to conduct litigation properly; or

(E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) **Disciplinary Procedures**.

(A) When it is shown to a judge of this court that an attorney has engaged in conduct which might warrant disciplinary action involving suspension or disbarment, the judge receiving the information shall bring the matter to the attention of the chief judge, who will poll the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the disciplinary matter will be assigned to the chief judge, or a judge designated by the chief judge, who will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing before the chief judge or a judge designated by the chief judge, if requested, or upon expiration of the time prescribed for a response if no response is made, the chief judge or a judge designate by the chief judge, shall enter an appropriate order.

(B) At any hearing before the chief judge or a judge designated by the chief judge, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time of the hearing and charges. Prosecution of

the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

(e) **Notification of Disciplinary Action**. Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the United States Court of Appeals for the Fifth Circuit, and the National Discipline Data Bank operated by the American Bar Association.

(f) **Reinstatement**. Except for suspensions as reciprocal discipline pursuant to paragraph AT-2(b), any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension, provided that the bar membership fee required by Local Rule AT-1(b)(3) has been paid. Any lawyer who was suspended as reciprocal discipline pursuant to paragraph AT-2(b) may apply, in writing, at the end of the period of suspension imposed by this court. In the application for reinstatement, the attorney shall advise the court of the status of the attorney's right to practice before the jurisdiction giving rise to reciprocal discipline in this court. The attorney shall also make a full disclosure of any disciplinary actions that may have occurred in other federal or state courts since the imposition of reciprocal discipline by this court. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

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:[4]

(a) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

(b) A lawyer owes candor, diligence, and utmost respect to the judiciary.

(c) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

(d) A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

(e) Lawyers should treat each other, the opposing party, the court, and court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(f) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(g) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor ward opposing lawyers.

(h) A lawyer should not use any form of discovery or the scheduling of discovery as a means of harassing opposing counsel or counsel's client.

(i) Lawyers will be punctual in communications with others and in honoring scheduled appearances and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

(j) If a fellow member of the bar makes a just request for cooperation or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. The court is not bound to accept agreements of counsel to extend deadlines imposed by rule or court order.

(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.

(l) 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, located at www.txed.uscourts.gov, and to conduct themselves accordingly.

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[4] The standards enumerated here are set forth in the *en banc* opinion in *Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n.*, 121 F.R.D. 284 (N.D. Tex. 1988).

Current as of December 1, 2019 (General Order 19-14)

SECTION IV: ADMIRALTY RULES

Local Admiralty Rule (a). Authority and Scope.

LAR (a)(1) Authority. The local admiralty rules of the United States District Court for the Eastern District of Texas are promulgated by a majority of the judges as authorized by and subject to the limitation of Federal Rule of Civil Procedure 83 (Federal Rule or Rules).

LAR (a)(2) Scope. The local admiralty rules apply only to civil actions that are governed by Supplemental Rule A of the Supplemental Rules for Certain Admiralty and Maritime Claims (Supplemental Rule or Rules). All other local rules are applicable in these cases, but to the extent that another local rule is inconsistent with the applicable local admiralty rules, the local admiralty rules shall govern.

LAR (a)(3) Citation. The local admiralty rules may be cited by the letters "LAR" and the lower case letters and numbers in parentheses that appear at the beginning of each section. The lower case letter is intended to associate the local admiralty rule with the Supplemental Rule that bears the same capital letter.

LAR (a)(4) Definitions. As used in the Local Admiralty Rules, the word "Rule" followed by a numeral (*e.g.*, Rule 12) means a Federal Rule of Civil Procedure; the word "Rule" followed by a capital letter (*e.g.*, Rule C) means a Supplemental Rule for Certain Admiralty and Maritime Claims; the word "court" means the district court issuing these LARs; the term "judicial officer" means the United States district judge or a United States magistrate judge; the word "clerk" means the clerk of the district court and includes deputy clerks of court; the word "Marshal" means the United States Marshal and includes deputy Marshals; the word "keeper" means any person or entity appointed by the Marshal to take physical custody of and maintain the vessel or other property under arrest or attachment; and the term "substitute custodian" means the individual or entity who, upon motion and order of the court, assumes the duties of the Marshal or keeper with respect to the vessel or other property arrested or attached.

LAR (a)(5) Bonds. When a bond is posted under the Local Admiralty Rules for any reason, it should be electronically filed in the case by the posting party. The paper original of the bond shall be retained by the posting party unless otherwise directed by the court.

Local Admiralty Rule (b). Maritime Attachment and Garnishment.

LAR (b)(1) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Rules or the Supplemental Rules, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Local Admiralty Rule (c) Actions in Rem: Special Provisions.

LAR (c)(1) Intangible Property. The summons to show cause why property should not be deposited in court issued pursuant to Supplemental Rule C(3)(c) shall direct the person having control of intangible property to show cause no later than seven days after service why the intangible property should not be delivered to the court to abide the judgment. A judicial officer for good cause shown may lengthen or shorten the time. Service of the warrant has the effect of arresting the intangible property and bringing it within the control of the court. Service of the summons to show cause requires a garnishee wishing to retain possession of the property to establish grounds for doing so, including specification of the measures taken to segregate and safeguard the intangible property arrested. The person who is served may, upon order of the court, deliver or pay over to the person on whose behalf the warrant was served or to the clerk of the court the intangible property proceeded against to the extent sufficient to satisfythe plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. The person asserting any ownership interest in the property or a right of possession may show cause as provided in Supplemental Rule C(6)(a) why the property should not be delivered to the court.

LAR (c)(2) Publication of Notice of Action and Arrest. The notice required by Rule C(4) shall be published at least once in a newspaper named in LAR (g)(2), and plaintiff's attorney shall file with the clerk a copy of the notice as it was published. The notice shall contain:

(A) The court, title, and number of the action;
(B) The date of the arrest;
(C) The identity of the property arrested;
(D) The name, address, and telephone number of the attorney for plaintiff;
(E) A statement that a person asserting any ownership interest in the property or a right of possession pursuant to Supplemental Rule C(6) must file a statement of such interest with the clerk and serve it on the attorney for plaintiff within fourteen days after publication;
(F) A statement that an answer to the complaint must be filed and served within twenty-one days after filing the statement of ownership interest in the property or right of possession, and that otherwise, default may be entered and condemnation ordered;
(G) A statement that applications for intervention under Federal Rule 24 by persons asserting maritime liens or other interests shall be filed within thirty days after publication; and
(H) The name, address, and telephone number of the Marshal, keeper, or substitute custodian.

LAR (c)(3) Default In Action In Rem.

(A) Notice Required. A party seeking a default judgment in an action in rem must satisfy the judge that due notice of the action and arrest of the property has been given:
  (1) By publication as required in LAR (c)(2), and
  (2) By service upon the Marshal and keeper, substitute custodian, master, or other person having custody of the property, and
  (3) By mailing such notice to every other person who has not appeared in the action and is known to have an interest in the property.

(B) Persons with Recorded Interests.
  (1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard certificate of ownership.
  (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.
  (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests and/or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

LAR (c)(4) Entry of Default and Default Judgment. After the time for filing an answer has expired, the plaintiff may move for entry of default under Federal Rule 55(a). Default will be entered upon showing that:

(A) Notice has been given as required by LAR (c)(3)(A); and
(B) Notice has been attempted as required by LAR (c)(3)(B), where appropriate; and
(C) The time to answer by claimants of ownership to or possession of the property has expired; and
(D) No answer has been filed or no one has appeared to defend on behalf of the property.

The plaintiff may move for judgment under Rule 55(b) at any time after default has been entered.

Local Admiralty Rule (d). Possessory, Petitory, and Partition Actions.

LAR (d)(1) Return Date. In a possessory action under Rule D, a judicial officer may order that the statement of interest and answer be filed on a date earlier than twenty-one days after arrest. The order may also set a date for expedited hearing of the action.

Local Admiralty Rule (e). Actions In Rem and Quasi In Rem. General Provisions.

LAR (e)(1) Itemized Demand for Judgment. The demand for judgment in every complaint filed under Rule B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Rule E(5)(a) may be based upon these allegations.

LAR (e)(2) Salvage Action Complaints. In an action for salvage award, the complaint shall allege the dollar value of the vessel, cargo freight, and other property salved or other basis for an award, and the dollar amount of the award sought.

LAR (e)(3) Verification of Pleadings. Every complaint in Rule B, C, and D actions shall be verified upon oath or solemn affirmation or in the form provided by 28 U.S.C. § 1746 by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information, and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized representative thereof; and state that the affiant or declarant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized representative, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized representative, which shall be procured by commission or as otherwise ordered.

LAR (e)(4) Review by Judicial Officer. Unless otherwise required by the judicial officer, the review of complaints and papers called for by Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment, or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Rules B and C shall consist of an affidavit or a declaration pursuant to 28 U.S.C. § 1746 describing in detail the facts establishing the exigent circumstances.

LAR (e)(5) Return of Service. The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the Marshal. A person specially appointed by the court under Rules B or C who has served process of maritime attachment and garnishment or a warrant of arrest that seized property shall promptly file a verified return showing the name of the individual on whom the process or warrant was served, the identity of the person or entity on whom service was made, the documents served, the manner in which service was completed (*e.g.*, personal delivery), and the address, date, and time of service.

LAR (e)(6) Property in Possession of United States Officer. When the property to be attached or arrested is in the custody of an employee or officer of the United States, the Marshal will

deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The Marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

LAR (e)(7) Security for Costs. In an action under the Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Rule E(2)(b). Unless otherwise ordered, the amount of security shall be $500. The party so ordered shall post the security within seven days after the order is entered. A party who fails to post security when due may not participate further in the proceedings, except by order of the court. A party may move for an order increasing the amount of security for costs.

LAR (e)(8) Adversary Hearing. The adversary hearing following arrest or attachment or garnishment provided for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer within three days, unless otherwise ordered. The person(s) requesting the hearing shall notify all persons known to have an interest in the property of the time and place of the hearing.

LAR (e)(9) Appraisal. An order for appraisal of property so that security may be given or altered will be entered upon motion. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee shall be paid in the first instance by the moving party, but it is taxable as an administrative cost of the action.

LAR (e)(10) Security Deposit for Seizure of Vessels. The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit a sum deemed sufficient by the Marshal to cover the expenses of the Marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The security deposit for seizure of a vessel or property aboard a vessel is $5,000 if there is a substitute custodian, and $10,000 if the vessel or property is to remain in the custody of the Marshal. The Marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time at the Marshal's request to cover estimated expenses. A party who fails to advance such additional costs as required by the Marshal may not participate further in the proceedings except by order of the court. The Marshal may, upon notice to all parties, petition the court for an order to be issued forthwith releasing the vessel if additional sums are not advanced within three days after the initial request.

LAR (e)(11) Intervenor's Claims.

(A) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the Marshal or custodian substituted

therefor, anyone having a claim against the vessel or property is required to present it by filing an intervening complaint and obtain a warrant of arrest, and not by filing an original complaint, unless otherwise ordered by a judicial officer. No formal motion is required. The intervening party shall serve a copy of the intervening complaint and warrant of arrest upon all parties to the action and shall forthwith deliver a conformed copy of the complaint and warrant of arrest to the Marshal, who shall deliver the copies to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the Marshal for the intervenor's seizure of a vessel as required by LAR (e)(10), but will receive the funds back, less the intervenor's share of the Marshal's fees and expenses as stated in LAR (e)(11)(B).

(B) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the preceding plaintiffs and intervenors, enforceable on motion, consisting of the intervenor's share of the Marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims asserted against the property. If any party plaintiff permits vacation of an arrest, attachment, or garnishment, the remaining plaintiffs shall share the responsibility to the Marshal for fees and expenses in proportion to the remaining claims asserted against the property and for the duration of the Marshal's custody because of each such claim.

LAR (e)(12) Custody of Property.

(A) Safekeeping of Property. When a vessel or other property is brought to the Marshal's custody by arrest or attachment, the Marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the Marshal may be appointed by order of the court. Notice of the application to appoint a substitute custodian must be given to all parties and the Marshal. The application must show the name of the proposed substitute custodian, the fee, if any, to be charged by the proposed substitute custodian, the location of the vessel during the period of custody, and the proposed insurance coverage.

(B) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and in maintaining the court's custody. The arresting or attaching party shall reimburse the Marshal for premiums paid for the insurance and where possible shall be named as an additional insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a

substitute custodian, or for other relief that will require an additional premium, shall reimburse the Marshal therefor. The premiums charged for the liability insurance shall be paid in the first instance by the initial party obtaining the arrest and holding of the property, but are taxable as administrative costs of the action while the vessel, cargo, or other property is in custody of the court.

(C) (i) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, cargo handling will cease unless an order of the court is received by the Marshal. No movement of or repairs to the vessel shall take place without order of the court. The applicant for an order under this rule shall give notice to the Marshal and to all parties of record.

(ii) Insurance. If an applicant shows adequate insurance to indemnify the Marshal for liability, the court may order the Marshal to permit cargo handling, repairs, or movement of the vessel, cargo, or other property. The costs and expenses of such activities shall be borne as ordered by the court. Any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the Marshal and to all parties of record. The judicial officer will require that adequate insurances on the property will be maintained by the successor to the Marshal, before issuing the order to change arrangements.

(D) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the court who has not been paid and claims the right to payment a an expense of administration shall submit an invoice to the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the Marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

LAR (e)(13) Sale of Property.

(A) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action in rem shall be published on at least four days, between three and thirty-one days prior to the day of the sale.

(B) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:

(i) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is $1000, or less.

(ii) If the bid exceeds $1,000, the bidder shall immediately pay a deposit of at least $1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three days.

(iii) If an objection to the sale is filed within the period in LAR (e)(13)(F), the bidder is excused from paying the balance of the purchase price until three days after the sale is confirmed.

(iv) Payment shall be made by certified check or by cashier's check.

(C) Late Payment. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall pay the Marshal the cost of keeping the property from the due date until the balance is paid, and the Marshal may refuse to release the property until this charge is paid.

(D) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder shall be in default, and the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the Marshal because of the default, the balance being retained in the registry of the court awaiting its order.

(E) Report of the Sale by Marshal. At the conclusion of the sale, the Marshal shall forthwith file a written report with the court setting forth the notice given of: the fact of sale; the date of the sale; the names, addresses, and bid amounts of the bidders; the price obtained; and any other pertinent information.

(F) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum with the Marshal that is sufficient to pay the expense of keeping the property for at least seven days. Payment to the Marshal shall be by certified check or cashier's check. The court shall hold a hearing on the confirmation of the sale.

(G) Confirmation of Sale. If no objection to the sale has been filed, the sale shall be confirmed by order of the court no sooner than three days nor later than five days from the court's receipt of the Marshal's written report. The Marshal shall transfer title to the purchaser upon the order of the court.

(H) Disposition of Deposits.

(i) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(ii) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

LAR (e)(14) Presentation of Matters. If the judge to whom a case has been assigned is not readily available, any matter under the Local Admiralty Rules may be presented to any other judge in the district without reassigning the case.

Local Admiralty Rule (f) Limitation of Liability.

LAR (f)(1) Security for Costs. The amount of security for costs under Rule F(1) shall be $1,000, and security for costs may be combined with the security for value and interest unless otherwise ordered.

LAR (f)(2) Order of Proof at Trial. In an action where vessel interests seek to limit their liability, the damage claimants shall offer their proof first, whether the right to limit arises as a claim or as a defense.

Local Admiralty Rule (g) Special Rules.

LAR (g)(1) Newspapers for Publishing Notices. Unless otherwise ordered by the court, every notice required to be published under the Local Admiralty Rules or any rules or statutes applying to admiralty and maritime proceedings shall be published in the following newspaper[s] of general circulation in the District:

Beaumont Enterprise

LAR (g)(2) Use of State Procedures. When the plaintiff invokes a state procedure in order to attach or garnish as permitted by the Federal Rules of Civil Procedure or the Supplemental Rules for Certain Admiralty and Maritime Claims, the process of attachment or garnishment shall identify the state law upon which the attachment or garnishment is based.

Current as of December 1, 2019 (General Order 19-14)

SECTION V: PATENT RULES

1. SCOPE OF RULES

1-1. Title.

These are the Rules of Practice for Patent Cases before the Eastern District of Texas. They should be cited as "P. R. __."

1-2. Scope and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in P. R. 4-6 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Civil Local Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Patent Rules. The deadlines set forth in these rules may be modified by Docket Control Order issued in specific cases.

1-3. Effective Date.

These Patent Rules shall take effect on February 22, 2005 and shall apply to any case filed thereafter and to any pending case in which more than 9 days remain before the Initial Disclosure of Asserted Claims is made. The parties to any other pending civil action shall meet and confer promptly after February 22, 2005, for the purpose of determining whether any provision in these Patent Rules should be made applicable to that case. No later than 7 days after the parties meet and

confer, the parties shall file a stipulation setting forth a proposed order that relates to the application of these Patent Rules. Unless and until an order is entered applying these Patent Local Rules to any pending case, the Rules previously applicable to pending patent cases shall govern.

2. GENERAL PROVISIONS

2-1. Governing Procedure.

(a) Initial Case Management Conference. Prior to the Initial Case Management Conference with the Court, 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.

(6) Whether the court should authorize the filing under seal of any documents containing confidential information.

(b) Further Case Management Conferences. To the extent that some or all of the matters provided for in P. R. 2-1 (a)(1)-(5) are not resolved or decided at the Initial Case Management Conference, the parties shall propose dates for further Case Management Conferences at which such matters shall be decided.

(c) **Electronic Filings.** All patents attached as exhibits to any filing submitted electronically shall be in searchable PDF format. Any other documents attached as exhibits to any filing submitted electronically should be in searchable PDF format whenever possible.

2-2. Confidentiality.

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the Court has not entered a protective order, until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party 5 days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this local rule shall keep it confidential and use it only for purposes of litigating the case.

2-3. Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Patent Rules must be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2-4. Admissibility of Disclosures.

Statements, disclosures, or charts governed by these Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures provided for in P. R. 4-1 and 4-2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Rules must be taken.

2-5. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Rules. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Patent Rules:

(a) Requests seeking to elicit a party's claim construction position;

(b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Patent Rules, unless there exists another legitimate ground for objection.

2-6. **Assignment of Related Cases.** Separately filed cases related to the same patent shall be assigned to the same judge, i.e., the judge assigned to the first related case.

3. PATENT INITIAL DISCLOSURES

3-1. Disclosure of Asserted Claims and Infringement Contentions.

Not later than 10 days before the Initial Case Management Conference with the Court, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(e) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(f) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

3-2. Document Production Accompanying Disclosure.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and

copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to P. R. 3-1(e), whichever is earlier; and

(c) A copy of the file history for each patent in suit.

The producing party shall separately identify by production number which documents correspond to each category.

3-3. Invalidity Contentions.

Not later than 45 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Invalidity Contentions" which must contain the following information:

(a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the

information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(c) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

3-4. Document Production Accompanying Invalidity Contentions.

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its P. R. 3-1(c) chart; and

(b) A copy of each item of prior art identified pursuant to P. R. 3-3(a) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

3-5. Disclosure Requirement in Patent Cases for Declaratory Judgment.

(a) Invalidity Contentions If No Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, P. R. 3-1 and 3-2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than 10 days after the defendant serves its answer, or 10 days after the Initial Case Management Conference, whichever is later, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to P. R. 3-3 and produce or make available for inspection and copying the documents described in P. R. 3-4. The parties shall meet and confer within 10 days of the service of the Invalidity Contentions for the purpose of determining the date on which the plaintiff will file its Final Invalidity Contentions which shall be no later than 50 days after service by the Court of its Claim Construction Ruling.

(b) Applications of Rules When No Specified Triggering Event. If the filings or actions in a case do not trigger the application of these Patent Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Rules to the case.

(c) Inapplicability of Rule. This P. R. 3-5 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint for infringement of the same patent.

3-6. Amending Contentions.

(a) Leave not required. Each party's "Infringement Contentions" and "Invalidity Contentions" shall be deemed to be that party's final contentions, except as set forth below.

(1) If a party claiming patent infringement believes in good faith that the Court's Claim Construction Ruling so requires, not later than 30 days after service by the Court of its Claim Construction Ruling, that party may serve "Amended Infringement Contentions" without leave of court that amend its "Infringement Contentions" with respect to the information required by Patent R. 3-1(c) and (d).

(2) Not later than 50 days after service by the Court of its Claim Construction Ruling, each party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" without leave of court that amend its "Invalidity Contentions" with respect to the information required by P. R. 3-3 if:

(A) a party claiming patent infringement has served "Infringement Contentions" pursuant to P. R. 3-6(a), or

(B) the party opposing a claim of patent infringement believes in good faith that the Court's Claim Construction Ruling so requires.

(b) Leave required. Amendment or supplementation any Infringement Contentions or Invalidity Contentions, other than as expressly permitted in P. R. 3-6(a), may be made only by order of the Court, which shall be entered only upon a showing of good cause.

3-7. Opinion of Counsel Defenses.

By the date set forth in the Docket Control Order, each party opposing a claim of patent

infringement that will rely on an opinion of counsel as part of a defense shall:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

(b) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of this P. R. 3-7 shall not be permitted to rely on an opinion of counsel as part of a defense absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

3-8. Disclosure Requirements for Patent Cases Arising Under 21 U.S.C. § 355 (Hatch-Waxman Act).

The following provision applies to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (commonly referred to as "the Hatch-Waxman Act"). This provision takes precedence over any conflicting provisions in P.R. 3-1 to 3-5 for all cases arising under 21 U.S.C. § 355.

(a) Upon the filing of a responsive pleading to the complaint, the Defendant(s) shall produce to Plaintiff(s) the entire Abbreviated New Drug Application or New Drug Application that is the basis of the case in question.

(b) Not more than 7 days after the Initial Case Management Conference, Plaintiff(s) must identify the asserted claims.

(c) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for their "Invalidity Contentions" for any patents referred to in Defendant(s) Paragraph IV Certification. This written basis shall contain all disclosures required by P.R. 3-3 and shall be accompanied by the production of documents required by P.R. 3-4.

(d) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for any defense of non-infringement for any patent referred to in Defendant(s) Paragraph IV Certification. This written basis shall include a claim chart identifying each claim at issue in the case and each limitation of each claim at issue. The claim chart shall specifically identify for each claim those claim limitation(s) that are literally absent from the Defendant(s) allegedly infringing Abbreviated New Drug Application or New Drug Application. The written basis for any defense of non-infringement shall also be accompanied by the production of any document or thing that the Defendant(s) intend to rely upon in defense of any infringement allegations by Plaintiff(s).

(e) Not more than 45 days after the disclosure of the written basis for any defense of non-infringement as required by P.R. 3-8(c), Plaintiff(s) shall provide Defendant(s) with a "Disclosure of Asserted Claims and Infringement Contentions," for all patents referred to in Defendant(s) Paragraph IV Certification, which shall contain all disclosures required by P.R. 3-1 and shall be accompanied by the production of documents required by P.R. 3-2.

(f) Each party that has an ANDA application pending with the Food and Drug Administration ("FDA") that is the basis of the pending case shall: (1) notify the FDA of any and all motions for injunctive relief no later than three business days after the date on which such a motion is filed; and (2) provide a copy of all correspondence between itself and the FDA pertaining to the ANDA application to each party asserting infringement, or set forth the basis of any claim of privilege for such correspondence, no later than seven days after the date it sends or receives any such correspondence.

(g) Unless informed of special circumstances, the Court intends to set all Hatch-Waxman cases for final pretrial hearing at or near 24 months from the date of the filing of the complaint.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms and Claim Elements for Construction.

(a) Not later than 10 days after service of the "Invalidity Contentions" pursuant to P. R. 3-3, each party shall simultaneously exchange a list of claim terms, phrases, or clauses which that party contends should be construed or found indefinite by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(f).

(b) The parties shall thereafter meet and confer for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) Not later than 20 days after the exchange of "Proposed Terms and Claim Elements for Construction" pursuant to P. R. 4-1, the parties shall simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties collectively have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element which any party contends is governed by 35 U.S.C. § 112(f), identify the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of

percipient and expert witnesses they contend support their respective claim constructions or indefiniteness positions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties shall also provide the identity and a brief description of the substance of that witness' proposed testimony.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4-3. Joint Claim Construction and Prehearing Statement.

(a) Not later than 60 days after service of the "Invalidity Contentions," the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information**:**

(1) The construction of those claim terms, phrases, or clauses on which the parties agree;

(2) Each party's proposed claim construction or indefiniteness position for each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that position, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its position or to oppose any other party's position, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(3) The anticipated length of time necessary for the Claim Construction Hearing;

(4) Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing and the identity of each such witness; and

(5) A list of any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

(b) Each party shall also simultaneously serve a disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B(i)-(ii) or 26(a)(2)(C) for any expert on which it intends to rely to support its proposed claim construction or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

4-4. Completion of Claim Construction Discovery.

Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction and Prehearing Statement.

4-5. Claim Construction Briefs.

(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

(b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

(d) At least 10 days before the Claim Construction Hearing held pursuant to P.R. 4-6, the parties shall jointly file a claim construction chart.

(1) Said chart shall have a column listing complete language of disputed claims with disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. The chart shall also include a fourth column entitled "Court's Construction" and otherwise left blank. Additionally, the chart shall also direct the Court's attention to the patent and claim number(s) where the disputed term(s) appear(s).

(2) The parties may also include constructions for claim terms to which they have agreed. If the parties choose to include agreed constructions, each party's proposed construction columns shall state "[**AGREED**]" and the agreed construction shall be inserted in the "Court's Construction" column.

(3) The purpose of this claim construction chart is to assist the Court and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements set forth in this rule, the parties are afforded substantial latitude in the chart's format so that they may fashion a chart that most clearly and efficiently outlines the disputed terms and proposed constructions. Appendices to the Court's prior published and unpublished claim construction opinions may provide helpful guidelines for parties fashioning claim construction charts.

(e) Unless otherwise ordered by the Court, the page limitations governing dispositive motions pursuant to Local Rule CV-7(a) shall apply to claim construction briefing.

4-6. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, two weeks following submission of the reply

brief specified in P.R. 4-5(c), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.