General Order 15-12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

GENERAL ORDER AMENDING LOCAL RULES

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

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 and the Federal Rules of Civil Procedure, along with 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) ~~These rules may be known and cited as Local Civil Rules.~~ **Admiralty Rules.** The Supplemental Rules for Certain Admiralty and Maritime Claims, as adopted by the Supreme Court of the United States, and the "United States District Court for the Eastern District of Texas Local Admiralty Rules" attached as Appendix A to these rules shall govern all admiralty and maritime actions in this court.

Comment [WH1]: Restyled for consistency

(c) **Patent Rules.** The "Rules of Practice for Patent Cases before the Eastern District of Texas" attached as Appendix B to these rules 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

Comment [WH2]: Relocated from LR CV-83.

* * * * *

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 and submitting a copy of the applicable form to the United States Patent Office or United States Copyright Office.

If service of summons is not waived, ~~an original and two copies of~~ the plaintiff must prepare and submit ~~the~~ a summons ~~in a civil action must be prepared by the attorney for the plaintiff~~

[1] New language appears in underlined, redlined text; deleted language appears in ~~strikeout~~ text.

~~and submitted~~ 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. ~~See LOCAL RULE CV-3~~.

(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.

~~(1) The attorney (or any plaintiff acting *pro se*) seeking service of civil process upon a pleading filed in this district will be responsible for designating a person over the age of eighteen years who is not a party in the case to make service.~~

~~(2) Service may be made by such designated person by personal service pursuant to Fed. R. Civ. P. 4, or by mailing a copy of the pleadings and summons by registered or certified mail to the person (restricted to addressee only) with return receipt requested, in accordance with Texas law.~~

~~(3) The service of subpoenas shall be completed pursuant to Fed. R. Civ. P. 45(c). A subpoena may be served by any person who is not a party or attorney in the case and who is not less than eighteen years of age.~~

~~(4)~~ (1) The party requesting service shall be 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.

~~Service through the Secretary of State for the State of Texas may be accomplished in the same manner as in (d)(1) and (d)(2) above and must be in accordance with applicable Texas statutes [two copies of the summons and complaint are required, as well as a fee to be paid to the Secretary of State].~~

Comment [WH3]: Language updated to reflect current practice of electronic submission of summons to the clerk.

Comment [WH4]: Incorrect reference.

Comment [WH5]: Unnecessary restatements of FRCP 4(c) and 45(b). Remainder of rule condensed into subsection (d).

Comment [DM6]: Unnecessary restatements of FRCP 4(c) and 45(b). The remainder of the rule is condensed into subsection (d).

Comment [DM7]: Unnecessary restatement of FRCP 4(e)(1).

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 documentation related to these types of applications; and other matters filed *ex parte* in connection with ongoing criminal investigations;

(B) filing from *pro se* litigants (prisoner and non-prisoner);

(C) return of the completed summons or waiver of service in a civil case;

(D) 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

(E) sealed civil complaints (these documents should be filed on a CD-ROM disk with the clerk along with a motion to seal the case). *See* LOCAL RULE CV-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) If the court permits, a party to a pending proceeding who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. If, during the course of the proceeding, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

(C) A Filing User may apply to the court for permission to withdraw from participation in the Electronic Filing System for good cause shown.

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

(A) Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes and constitutes entry of the document on the docket kept by the clerk. Receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.

(B) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the "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 local time where the court is located in order to be considered timely filed that day.

(4) **File Size Limitations.** No single electronic file, whether containing a document or an attachment, may exceed fifteen megabytes in size. Documents and/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 also* LOCAL RULE CV-11(c), "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) Unless authorized by statute or rule, a document in a civil case shall not be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

(B) A motion to file document(s) under seal must be filed separately from the document(s) sought to be sealed. A motion to seal that is filed as a sealed document does not need to include the certification specified in Section (A) above. *See* LOCAL RULE CR-49(b) (additional rules regarding the filing of sealed documents in criminal cases).

(C) 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 sealed copy of the order only to the lead attorney for each party who is responsible for distributing the order to all other counsel of record for that party. *See* LOCAL RULE CV-11.

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

(A) All orders, decrees, judgments, and proceedings of the court will be filed electronically by the court or court personnel in accordance with these rules, which will constitute entry on the docket kept by the clerk. Any order filed electronically has the same force and effect as if the judge had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

(B) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

(9) **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 ~~that was electronically filed~~. 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 at 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. In civil cases involving sealed documents, counsel must indicate that the sealed document(s) was/were promptly served by means other than the CM/ECF system, e.g., e-mail, conventional mail.

(1) **Letter Briefs.** Letter briefs ordered filed by the court must be served on every party and shall contain a certificate of service as required by Fed. R. Civ. P. 5(d). The ordered time period for any response or reply to a letter brief shall be calculated from the date of service in accordance with Fed. R. Civ. P. 6 and LOCAL RULE CV-6.

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

(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

[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.

Comment [WH8]: Edited for clarity.

Comment [WH9]: Parties attempt to read this rule narrowly as only allowing electronic service via the CM/ECF system. This reflects the broader intended scope of the rule.

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).

(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. Court staff may not copy or print transcripts for a requester during the ninety-day inspection period, nor can the transcript be printed from the public computer terminals located in the clerk's offices during that 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. 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 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 of court. 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 of court 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 ~~PACER~~ 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 ~~PACER~~ CM/ECF system or from the court reporter or transcriber.

Comment [WH10]: Updates language for consistency.

LOCAL RULE CV-6 Computation of Time

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

Comment [DM11]: FRCP 6(d) is being amended to delete the addition of 3 days to response periods after service by electronic delivery. Accordingly, Local Rule CV-6(a) no longer servers its purpose of stopping attempts to shorten filing times by simultaneous hand service in addition to electronic delivery. This change becomes effective 12/1/2015 consistent with the Federal Rule amendments

~~(b)~~ **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 the filing 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, a party

opposing a case dispositive motion shall limit the response to the motion to 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 surreply 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, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or 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 shall apply:

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

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

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

(D) a party's sur-reply briefing to summary judgment motions shall likewise 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. It is strongly recommended that any attached materials should have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted or underlined material in its

proper 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. In the event a party fails to oppose a motion in the manner prescribed herein, the court will assume that the party has no opposition.

(e) Time to File Response. A party opposing a motion has fourteen days 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. ~~*See* LOCAL RULE CV-6 (three days added to the prescribed period)~~. Any party may separately move for an order of this court lengthening or shortening the period within which a response may be filed.

Comment [WH12]: See Local Rule CV-6, above. Deletions effective 12/1/2015 per FRCP amendments.

(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. ~~*See* LOCAL RULE CV-6 (three days added to the prescribed period~~ 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. ~~*See* LOCAL RULE CV-6 (three days added to the prescribed period~~ 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.

Comment [WH13]: See Local Rule CV-6, above. Deletions effective 12/1/2015 per FRCP amendments.

(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 nonmovant. 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 judgment of acquittal in a criminal case;~~ for new trial;
(6) ~~motions to suppress in criminal cases;~~ 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; and
(10) for writs of garnishment, and
(11) 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. With the exception of motions to exceed page limitations, motions for leave to file a document must be accompanied by the document sought to be filed. The motion and the document should be filed separately. If the motion for leave to file is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the previously filed document will be stricken. The time for filing any responsive documents shall run from the date of the order granting the motion for leave to file.

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

(m)Emergency Motions. 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"; and (3) the chambers of the presiding judge is notified, either by telephone, e-mail, or fax, that an emergency motion has been filed.

(n) 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.

Comment [DM14]: Deleted as unnecessarily duplicative of LR CR-47.

Comment [WH15]: Section (n) has been added to combat attempts to subvert the page limitation rules by filing multiple separate motions *in limine*, sometimes resulting in hundreds of pages of *limine* issue briefing

~~**LOCAL RULE CV-9 Pleadings and Special Matters**~~

~~**Admiralty and Maritime Claims.** Admiralty and maritime claims in this court are governed by the Local Admiralty Rules, which appear as Appendix A to these rules.~~

Comment [DM16]: Unnecessary in light of LR CV-1(c).

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~~. Fed. R. ~~CIV~~. Civ. P. 5(a).

Comment [WH17]: Formatting change for consistency.

(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 ~~PACER~~ 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.

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

(~~b~~ 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.

(c) **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 shall appear the:

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

Comment [DM18]: Reference clarified. Updated to a more accurate reference.

Comment [WH19]: Paragraph division renumbered for clarity.

(d) **Withdrawal of Counsel.** Attorneys may withdraw from a case only by motion and order under conditions imposed by the court. Change of counsel will not be cause for delay.

(e) **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 P.O. box is not acceptable, and is responsible for keeping the clerk advised in writing of the current physical address. *Pro se* litigants must include in this advisement of the case numbers of all pending cases in which they are participants in this district.

(f) 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 and/or dismissal of his/her client, the attorney may file a request for termination of electronic notice.

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

*** * * * ***

~~**LOCAL RULE CV-16 Pretrial Conferences; Scheduling; Management**~~

~~(a) **Scheduling Conferences.** Within sixty days after the first defendant appears, the judge assigned to a case shall convene a scheduling conference pursuant to Fed. R. Civ. P. 16 and 26. The scheduling conference may be conducted in the courtroom, by telephone, mail, or other suitable means at the judge's discretion. A scheduling order will be entered in every case.~~

~~(b) **Pretrial Orders.** Pretrial orders will be standardized and used by each judge. The standardized form can be found on the court's website.~~

Comment [DM20]: Deletion is effective December 1, 2015 concurrent with Federal Rule amendments as an inaccurate and duplicative version of the recently amended Fed. R. Civ. P. 16.

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

(a) No Excuses. Absent 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 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 ~~the~~ 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 ~~the~~ any party's claim or defense ~~of any party~~:"

Comment [WH21]: Verbiage edited to conform to proposed Fed. R. Civ. P. 26 amendments; effective 12/1/2015.

(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-34 Production of Documents and Things

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

Comment [WH22]: Rule reference clarified.

(1) Where a party's physical or mental condition is at issue in the case, that party shall provide to the opposing party's 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 will have to show the need for them.

(2) Where lost earnings, lost earning capacity, or back pay is at issue in the case, 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.

(3) 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 which are 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 Jury Trial of Right

(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) ~~**Selection of Jurors.** Trial jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statutes and laws.~~ **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.

Comment [DM23]: This language is unnecessary as a local rule. This subject is governed by other orders of the court, not local rules.

~~**LOCAL RULE CV-41 Dismissal of Actions**~~

~~A dismissal for failure to prosecute may be ordered by this court upon motion by an adverse party or upon this court's own motion.~~

Comment [DM24]: This rule is duplicative of FRCP 41(b) and the court's own authority to manage its docket.

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 and/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 time the action is before this court.

~~**(b)Consolidation - Single Judge Involved.** When two or more actions are pending before a judge which involve either: (1) a common question of law or fact; or (2) the same parties and issues; or (3) different or additional parties and issues all of which arise out of the same transaction or occurrence, that judge may order that all or part of the actions be consolidated.~~

Consolidation - Multiple Judges Involved. Upon the assignment of related actions to two or more different judges within the District, the effected judges may, in their discretion, agree to assign the related actions to one judge.

Comment [DM25]: LR-CV 42(b) is deleted as duplicative of FRCP 42(a) and possibly impermissibly broader. LR CV-42(c) is renumbered and edited to more accurately reflect actual practice regarding the assignment of related actions.

* * * * *

LOCAL RULE CV-47 ~~Selection of Jurors~~ Communication with Jurors.

Comment [WH26]: Title updated for accuracy.

(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 the judge before whom the action was tried to converse with members of the jury.

* * * * *

LOCAL RULE CV-56 Summary Judgment

~~**Summary Judgment Procedure.**~~

Comment [DM27]: Subtitle deleted as unnecessary.

(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) any response to the statement of issues; and (2) any response to the "Statement of Undisputed Material Facts." The response should be supported by appropriate citations to proper summary judgment

evidence as set forth below. Proper summary judgment evidence should be attached to the response 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 response filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to determine whether the record contains an undesignated genuine issue of material fact for trial before entering summary judgment.

(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. The phrase "appropriate citations" means that any excerpted evidentiary materials that are attached to the motion or the response should be referred to by page and, if possible, by line. Counsel are strongly encouraged to highlight or underline the cited 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 its proper context. Only relevant, cited-to excerpts of evidentiary materials should be attached to the motion or the response.

*** * * * ***

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.

(1) **Specific Duties**. The duties a magistrate judge is authorized to perform include, but are not limited to, the following:

(A) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil cases;

(B) Accept petit jury verdicts in civil cases for a district judge;

(C) Upon consent of the parties, conduct any or all proceedings in a jury or non-jury civil matter, including the conducting of a trial, and enter final judgment in accordance with 28 U.S.C. §636(c);

(D) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in habeas corpus cases under §§ 2241, 2254 and 2255, and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the petition by the district judge[3];

(E) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all prisoner civil cases, and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge[4];

(F) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all non-prisoner civil cases, and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge[5];

(G) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all Social Security cases pursuant to 42 U.S.C. § 405(g), and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge[6];

(H) Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(I) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(J) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(K) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

---

[3] The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

[4] The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

[5] The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

[6] The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

(L) Conduct extradition proceedings under 18 U.S.C. § 3184;

(M) Conduct proceedings pursuant to provisions of § 7402(b) and 7604(a) of Title 26 U.S.C. to judicially enforce Internal Revenue Service summons;

(N) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;

(O) Perform the duties required by Local Rule CV-26(e) on "Discovery Hotline" calls.

(P) Conduct "Alternative Dispute Resolution" proceedings when assigned by a district judge.

(Q) Review civil *in rem* forfeiture suits filed by the United States, and if conditions for an action *in rem* appear to exist, enter orders so stating and authorizing warrants of arrest *in rem* and other appropriate initial orders.

(R) Perform any additional duty consistent with the Constitution and laws of the United States.

(b) **Objections to Nondispositive 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. ~~Any replies or surreplies shall not exceed three 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: ~~any replies or sur-replies shall not exceed four pages~~.. No further briefing is allowed absent leave of court.

Comment [DM28]: LR CV 72(b) and (c) are amended to provide an express deadline for responses to objection to non-dispositive motions, something left unaddressed by FRCP 72, and to limit objections to the objections and a response, deleting the opportunity for a reply or sur-reply absent leave, consistent with FRCP 72(b)(2). This serves to reduce costs since the issue will presumably have been already fully briefed before the magistrate's decision.

(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.

(e) **Disposition of Civil Cases by Consent of the Parties - 28 U.S.C. § 636(c).**

(1) The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) The clerk shall not file consent forms unless they have been signed by all the parties or their respective counsel in a case. No consent form will be made available, nor will the contents be made known to any judge, unless all parties have consented to the reference to a magistrate judge. *See* Fed. R. Civ. P. 73(b); 28 U.S.C. § 636(c)(2).

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(c)(1)(~~F~~ 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.

Comment [DM29]: Incorrect cross reference updated.

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 Books and 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 an order of the court. 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 physical or oversized exhibit to the court prior to the conclusion of hearing/trial. The court may order the parties to provide CD-ROM disk(s) containing PDF copies of all exhibits that were admitted by the court. 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.

(4) In cases appealed to the Fifth Circuit in which there was a hearing/trial, counsel must file all admitted exhibits within 14 days of the filing of the notice of appeal. ~~*See also* LOCAL RULE CR-55(a)(1).~~

Comment [WH30]: Reference no longer current.

(b) **Disposition of Exhibits by the Clerk.** Thirty days after any direct appeal has been exhausted or the time for taking that appeal has lapsed, and no further action is required by the trial court, the clerk is authorized to destroy any sealed or unsealed exhibits which have not been previously claimed by the attorney of record for the party offering the same in evidence at the hearing/trial.

(c) **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 shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form," Fed. R. Civ. P. 5(e), papers or other items containing or smeared with excrement or body fluids can be excepted from this rule on the ground that they constitute a health hazard to court employees 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 correction 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 him/her;

(4) a record of which parties have requested trial by jury (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 is being removed.

(d) Any motions pending in state court made by any party 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 of the court to the contrary, no sooner than the twenty-first day following an order of the court transferring the case to another district court or remanding it to the appropriate state court, the clerk shall 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 or reconsideration of the order of transfer or remand has been filed, the clerk shall delay mailing or transferring the file until the court has ruled on the motion for reconsideration.

(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 be filed with the clerk of court. 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 shall have the discretion to establish appropriate standards of dress and conduct.

(e) ~~Patent Rules.~~ ~~The "Rules of Practice for Patent Cases before the Eastern District of Texas" attached as Appendix B to these rules 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. Such orders can be found on the court's website, located at *www.txed.uscourts.gov*~~

Comment [DM31]: Relocated to LR CV-1(c) for better organization.

SECTION II: CRIMINAL RULES

LOCAL RULE CR-1 Scope

~~(a)~~ 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.

~~(b) These rules may be known and cited as Local Criminal Rules.~~

~~(c) The disposition of criminal cases shall be governed by the Plan for the United States District Court, Eastern District of Texas, for Achieving Prompt Disposition of Criminal Cases.~~

~~(d) Nothing in this rule shall be construed to limit the jurisdiction of a United States magistrate judge serving in the Eastern District of Texas acting pursuant to powers directly conferred by act of Congress or applicable rule.~~

Comment [WH32]: Deleted as unnecessary statements that do not reflect a rule of procedure.

* * * * *

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. ~~The defendant may also file a written waiver of arraignment with the court.~~

Comment [WH33]: Duplicative of Fed.R.Crim.P. 10(b)(2).

~~LOCAL RULE CR-17 Subpoenas~~

~~Attorneys shall prepare all subpoenas. The service of subpoenas shall be completed pursuant to Fed. R. Crim. P. 17(d). A subpoena may be served by any person who is not a party or attorney in the case and who is not less than eighteen years of age.~~

Comment [DM34]: Duplicative of Fed.R.Crim.P. 17.

LOCAL RULE CR-24 Trial Jurors

(a) ~~**Selection of Jurors.** Petit jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statutes and rules~~. **Communication with Jurors.**

Comment [WH35]: This language is unnecessary as a local rule. This subject is governed by other orders of the court, not local rules.

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

(2) After a verdict is rendered ~~but before the jury is discharged from further duty~~, an attorney must obtain leave of the judge before whom the action was tried to converse with members of the jury.

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

Comment [DM36]: Deleted as unnecessary restatement of court's inherent powers.

(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-44 Right to and Assignment of Counsel**~~

~~The appointment of counsel in criminal cases for persons who are financially unable to obtain adequate representation is governed by the local Criminal Justice Plan adopted by the court.~~

Comment [DM37]: Deleted as unnecessary since this subject is governed by plans adopted by general orders of the court

LOCAL RULE CR-47 Motions

(a) ~~**In General.** The district courts enter standing orders governing the filing of certain motions. This rule supplements such orders; however, the case specific order controls if there is a discrepancy between the two~~. **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 number of the cause 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

Comment [DM38]: Deleted as surplusage that does not state a rule.

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, a party opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. 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, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed five pages, excluding attachments.

(2) **Briefing Supporting Motions and Responses.** The motion and any briefing shall be **Selection of Jurors.** Petit jurors shall be selected at random in accordance with a plan adopted by this court pursuant to applicable federal statutes and rules 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 *in limine*~~; motions for judgment of acquittal;
(C) motions to suppress;
(D) motions for new trial;
(E) any motion ~~captioned as "joint," "agreed," or "unopposed"~~ 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) for reconsideration; and
(I) dispositive motions.

Comment [DM39]: Motions in limine are removed from the list of motion that do not require a certificate of conference. In the court's experience, many motions in limine are unopposed or can benefit from a conference between counsel before being presented to the court for decision.

Comment [DM40]: Edited for consistency.

Comment [DM41]: Dispositive motions are added to the list of exempted motions to capture any dispositive motion not expressly listed, consistent with LR CR-47(b).

(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. ~~Three days shall be added to the prescribed time period pursuant to Fed. R. Crim. P. 45(c)~~ Any party may separately move for an order of the court 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 its proper 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 ~~papers~~ 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 the document being filed 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.

Comment [WH42]: See Local Rule CV-6, above. Deletion to be effective 12/1/2015 with FRCrP rule amendments.

Comment [DM43]: Language updated for consistency.

(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 must be 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 findings of the court 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)(1) 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, the court finds 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, or 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[7], which shall be governed by paragraph (d) below;
6. addenda to plea agreements described in paragraph (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 U.S. 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;
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.

Comment [DM44]: Edited for consistency.

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.

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

(d) **Sealing and Unsealing of Plea Agreements (Item 5 Above).**

(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 subparagraph (c) above, the court finds that 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 ~~is~~ are accepted absent a further order of the court 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.

Comment [DM45]: Edited for clarity.

(e) **Sealed Addendums to Plea Agreements.** Every plea agreement in this court shall have an addendum that is sealed (see section (c) 4 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, the 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 ~~A~~all sealed criminal case documents ~~from defendants proceeding *pro se* shall be submitted~~ in paper format to the clerk's office for filing ~~in paper format~~.

Comment [DM46]: Edited for clarity.

(h) Unless otherwise ordered by the presiding judge, ~~C~~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 and not to the clerk's office. ~~Judges may opt out of this rule by entering an order.~~

Comment [DM47]: Edited for clarity.

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 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~~ Fed. R. Crim. P. 9(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 of court. 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 of court 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 ~~PACER~~ 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 ~~PACER~~ CM/ECF system or from the court reporter or transcriber.

Comment [WH48]: Pertinent reference corrected.

Comment [DM49]: Sentence added for consistency with LR CV 5.2.

Comment [WH50]: Language updated for consistency.

LOCAL RULE CR-55 Records

(a) **Disposition of Trial Exhibits by Clerk.** ~~After providing notice to the parties, the clerk is authorized to destroy any sealed or unsealed exhibits eighteen months from either the date of the final judgment in the district court, if no appeal is filed, or the date that the direct criminal appeal process concludes.~~ The Clerk will maintain all trial exhibits in criminal cases until the sentence of confinement set forth in the judgment of conviction, along with probation and supervised release conditions imposed by the Court, have been satisfied. At the end of this time period, the Clerk will contact the parties and provide notice of the intent to destroy the exhibits. If the parties do not object after receiving this notice, the exhibits will be destroyed. If either party objects, the Clerk will maintain the exhibits described in this paragraph and on an annual basis contact the parties to notify them of the intent to destroy the exhibits unless objections are received.

(b) **Disposition of Sealed Exhibits by Clerk.** Sealed exhibits submitted in miscellaneous cases to obtain pen registers, wiretaps, etc. will be maintained in the court's vault for three years. At the end of this time, the Clerk will contact the parties and provide notice of the intent to destroy the sealed exhibits. If the parties do not object after receiving this notice, the sealed exhibits will

be destroyed. If the parties do object, the Clerk will maintain the sealed exhibits described in this paragraph and on an annual basis contact the parties to notify them of the intent to destroy the exhibits unless objections are received. Once the parties no longer object to the destruction of the sealed exhibits after receiving notice, the Clerk will proceed to destroy the sealed exhibits.

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

(1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without an order of the court. 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 trial exhibits may be submitted in binders for the court's use.

(3) The parties shall provide letter-sized copies of any physical or oversized exhibit to the court prior to the conclusion of hearing/trial. The court may order parties to provide CD-ROM disk(s) containing PDF copies of all exhibits that were admitted by the court. 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.

(4) In cases appealed to the Fifth Circuit in which there was a hearing/trial, counsel must file all admitted exhibits within 14 days of the filing of the notice of appeal. ~~See also LR CV-79(a)(4)~~

Comment [DM51]: The revisions to subsections (a) and (b) of this rule are designed to ensure that trial exhibits are preserved until such time as any direct appeal and collateral attacks on a criminal judgment are exhausted. There is no definitive time frame for these types of appeals and attacks to be completed, thus the use in the revised language of the term of imprisonment and any supervised release or probation will ensure that the exhibits are available during the time period when any post-judgment proceedings would occur. The use of a definitive date set forth in the judgment of conviction also provides ease of calculation of the destruction date for the clerk's office. There is no set means of notice to the parties provided. Instead, the clerk's office has discretion to use the means necessary to communicate the intended destruction date as it already does in civil cases

Comment [WH52]: Added for consistency with LR CV-79.

Comment [WH53]: Reference deleted as unnecessary.

LOCAL RULE CR-59 Matters Before a Magistrate Judge

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

(1) **Specific Duties.** The duties a magistrate judge is authorized to perform include, but are not limited to, the following:

(A) Conduct arraignments and take not guilty pleas. A magistrate judge can conduct *voir dire* in a criminal case when assigned by a district judge and with consent of the parties;

(B) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

(C) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

(D) Conduct necessary preliminary proceedings leading to the potential revocation of probation;

(E) Modify, revoke, or terminate supervised release or probation of any person sentenced to a term of supervised release or probation by a magistrate judge;

(F) Conduct guilty plea proceedings in criminal felony cases with the permission of the presiding district judge and the signed consent of the defendant;

(G) Conduct an evidentiary hearing, when designated by a district judge, to modify, revoke, or terminate supervised release and to submit proposed findings of fact and recommendations, including, in the case of revocation, a recommended sentence. (See 18 U.S.C. §3401). Recommendations are to be submitted in accordance with 28 U.S.C. §636(b)(1)(B), enabling the district judge to make a *de novo* review.

(H) Issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(I) Perform any additional duty consistent with the Constitution and laws of the United States.

(b) **Nondispositive Matters.** ~~A motion for reconsideration of a non-dispositive matter and any response thereto shall not exceed ten pages; any replies or sur-replies shall not exceed five pages~~. 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.

Comment [WH54]: Updated for consistency with LR CV-72. See above.

(c) **Dispositive Matters.** An objection to a recommendation regarding a dispositive matter and any response thereto shall not exceed ~~fifteen~~ eight pages~~; any replies or sur-replies shall not exceed five pages~~. No further briefing is allowed absent leave of court.

Comment [WH55]: Updated for consistency with LR CV-72. See above.

(d) **Assignment of Criminal 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 in criminal cases 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 of court. The applicant must read and comply with LOCAL RULE AT-3, the "Standards of Practice to Be Observed by Attorneys," and the local rules of this court. The application shall be made using the form that is available on the court's website and must be signed by the applicant personally. ~~*See* LOCAL RULE CV-5(a)(5)~~. 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

Comment [WH56]: Incorrect cross reference deleted.

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 U.S. 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) 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.

(2) When it is shown to the court that a member of its bar has been either disbarred or suspended, the clerk shall enter an order for the court, effective fourteen days after issuance unless sooner modified or stayed, disbarring or suspending the member from practice in this court upon terms and conditions identical to those set forth in the order of the other court.

(3) 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. The clerk will thereafter enter a reciprocal order effective in the courts of this district.

(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.** 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~~(e)~~ (b)(3) has been paid. 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.

Comment [DM57]: Incorrect cross reference updated.

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:[8]

(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, to the judiciary, candor, diligence, and utmost respect.

(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 members of the 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 toward 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.

---

[8] 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).

(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.

Comment [WH58]: This existing text is assigned as subsection (L) for paragraph consistency.

* * * * *

APPENDIX B Local Patent Rules

* * * * *

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) ~~At or before the Initial Case Management Conference~~, 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.

Comment [DM59]: Section (a) was amended to require an earlier production deadline for defendant's New Drug application, which now must be produced concurrent with defendant's responsive pleading to the complaint.

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

Comment [DM60]: New section (b) requires the plaintiff to identify its asserted claims within seven days of the initial case management conference.

(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.

Comment [DM61]: New section (g) sets forth the court's intent to set all Hatch-Waxman cases for pretrial hearing on or near 24 months from the date of the filing of the complaint. This time frame is reflective of Congressional intent underlying the passage of the Hatch-Waxman Act, and provides filers with the benefit of the statutorily-provided 30-month stay.

FOR THE COURT:

Signed this 6 day of May, 2015.

RON CLARK
Chief Judge