

**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-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~~ using the event Notice of Filing of Patent/Trademark Form (AO 120) or Notice of Filing of Copyright Form (AO 121).

Comments: Adding the proper events to the above local rule will reduce filing deficiencies as a result of attorneys who attach the AO Form 120/121 to the complaint instead of docketing it as a separate event. When the proper notice event is used, electronic notice goes out to the U.S. Patent Office/U.S. Copyright Office.

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

¹ New language appears in underlined text, and deleted language appears in strikeout text.

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

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

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

~~(E)~~ (D) 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).

Comments: The clerk's office receives numerous calls from attorneys wanting to electronically file their returns of summons. Eliminating (C) from the above local rule will not only limit the number of calls to the clerk's office, but will also make filing the return of completed summons easier for the attorneys.

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:

* * * * *

(7) Sealed Documents.

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

Comments: Unlike many districts, current EDTX local rules do not require the filing of a public but redacted version of any sealed pleading, brief, or motion. As a result, the docket sheets in many cases consist of almost nothing but sealed pleadings, totally obscuring cases from public view. Because the law imposes presumption of public access to court filings, this new provision of the rule requires the filing of a redacted version of most sealed filings, while still respecting the proper practice of protecting confidential information authorized to be filed under seal. The clerk’s office will give further instructions on implementation of this new rule provision, including a new CM/ECF event for REDACTED PUBLIC VERSION OF SEALED DOCUMENT that can be linked to the document number for the sealed item.

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

(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.~~

Comments: Letter briefing as a practice appears to have been abandoned; thus, the letter brief requirement of LR CV-5 is no longer necessary and any future issues can be addressed in an order implementing a letter brief requirement.

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

(e) **Time to File Response.** A party opposing a motion has fourteen days (twenty-one days for summary judgment motions) from the date the motion was served in which to file a response and any supporting documents, after which the court will consider the submitted motion for decision. Any party may separately move for an order of this court lengthening or shortening the period within which a response may be filed.

Comments: Because of the recent elimination of the three-day rule of FRCP 6(d), it has been suggested by members of the bar that response times for summary judgment motions are now too short at fourteen days. Unlike the movant, a non-movant does not have the ability to craft its response for filing at a time of its choosing. Accordingly, additional time is appropriate to allow a non-movant adequate time to address the often substantial substantive issues that may be presented by summary judgment.

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 judge³;~~

~~(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 judge⁴;~~

~~(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 judge⁵;~~

~~(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 judge⁶;~~

~~(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;~~

~~(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.~~

Comments: The above listed duties are deleted because duplicative of the general authorization in both subsection (a) and 28 U.S.C. § 636(b)(3).

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(e)(b)(1)(E). Any other attorney who wishes to receive notice of judicial orders, judgments, and other filings must file a notice of appearance of counsel with the court.

Comments: Typographical correction to cross-reference.

LOCAL RULE CV-83 Rules by District Courts; Judge's Directives

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

Comments: This new section is added to bring the rules into compliance with the Alternative Dispute Resolution Act, 21 U.S.C. § 651, et seq.

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

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

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(4) If redaction is requested, a party is to submit to the court reporter or transcriber and file with the court, within twenty-one days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal data identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal identifiers listed in Fed. R. Crim. P. 49.1(a). If an attorney wishes to redact additional information, he or she may make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion.

Comments: Typographical correction to cross-reference.

LOCAL RULE CR-55 Records

~~(a) Disposition of Trial Exhibits by Clerk. 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.~~

~~(e)~~ **(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 trial exhibits may be submitted in binders for the court’s use.

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

Comments: Subsections (a) and (b) are deleted to remove potential inconsistency with Fed. R. Crim. P. 55 and the Guide to Judiciary Policy. Subsequent paragraphs are consolidated and renumbered for uniformity.

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.~~

Comments: The above listed duties are deleted because duplicative of the general authorization in both subsection (a) and 28 U.S.C. § 636(b)(3).

LOCAL RULE AT-2 Attorney Discipline

(a) **Generally.** The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of

professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages, customs, and practices of this bar.

(b) Disciplinary Action Initiated in Other Courts.

(1) Except as otherwise provided in this subsection, A member of this bar 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~~ lost his or her right to practice as described in subsection (1) above, the clerk shall issue an order directing the attorney to show cause within thirty days why the imposition of the identical discipline in this district should not be imposed. If the attorney fails to comply by filing a response, then the court shall enter an order imposing discipline identical to that of the other entity to the extent practicable. If the attorney files a response, the court will consider the following defenses in determining whether the identical discipline is warranted in this court: that the procedure followed in the other jurisdiction deprived the attorney of due process; that the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction; that the imposition of the identical discipline would result in a grave injustice; that the misconduct established by the other jurisdiction warrants substantially different discipline in this court; that the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court. If the attorney fails to establish one or more of the defenses listed above, the court shall enter the identical discipline to the extent practicable. If the attorney establishes one or more of these defenses, the court may impose whatever discipline it deems necessary and just. ~~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~~ proceed in accordance with this rule.

Comments: The automatic disbarment component of the rule is amended to ensure consistency with the requirement that an attorney be afforded due process before suspension or disbarment. *See Theard v. United States*, 354 U.S. 278, 282 (1957) (attorney must be afforded “ample opportunity” to show cause why he should not be disbarred); *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 229 (5th Cir. 1998) (“[A]n attorney is entitled to procedural due process which includes notice and an opportunity to be heard in disbarment or suspension proceedings.”); Fed. R. App. P. 46(b)(2) (member must be given opportunity to show good cause why he should not be suspended or disbarred). The added procedures are drawn from similar language employed in the rules of the Texas Board of Disciplinary Appeals.

Signed this 13th day of November, 2017.

FOR THE COURT:



RON CLARK
Chief Judge