

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

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the Local Rules, having been approved by the judges of this court, are adopted for 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).

1. LOCAL RULE CV-5 Service and Filing of Pleadings and Other Papers

(a) **Electronic Filing Required.** Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

(1) **Exemptions from Electronic Filing Requirement.** The following are exempted from the requirement of electronic filing:

(A) In a criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; ~~petitions for revocation of probation or supervised release;~~ affidavits in support of search and arrest warrants, pen registers, trap and trace requests, wiretaps, and other documentation related to these types of applications; and other matters filed *ex parte* in connection with ongoing criminal investigations;

(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) papers received from another court under Fed. R. Crim. P. 5(c), Fed. R. Crim. P. 20, and Fed. R. Crim. P. 40;~~

~~(E)~~ 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

~~(F)~~ application to appear *pro hac vice*;

~~(G) any document pertaining to presentence investigation reports in criminal cases; and~~

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

(HE) 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).

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(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 Rules CV-11(c) ("Signing the Pleadings").

Comments: Probation is now filing its court documents electronically, so several sections of section (a)(1) were adjusted to reflect this reality.

Section (a)(1)(F) has been deleted in order to facilitate the electronic filing of *pro hac vice* applications.

A reference to Local Rule CV-11(c) was added to section (a)(5) in order to draw counsel's attention to the lead attorney permission requirement.

2. LOCAL RULE CV-7 ~~Motions Practice~~ 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, ~~filed as a separate document~~, 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. All other documents, including attachments and exhibits, should be in "searchable PDF" form whenever possible.

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(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;
- (6) motions to suppress in criminal cases;
- (7) for new trial;
- (8) issuance of letters rogatory;
- (9) objections to report and recommendations of magistrate judges or special masters;
- (10) for reconsideration;
- (11) for sanctions under Fed. R. Civ. P. 11, provided the requirements of Fed. R. Civ. P. 11(c)(2) have been met; ~~and~~
- (12) for writs of garnishment; and
- (13) any motion that is joined by, agreed to, or unopposed by all the parties.

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Comment: The title of this rule was changed to conform to the title of the national rule, Fed.R.Civ.P. 7.

Section (a) was adjusted to require that pleadings (e.g., complaints, answers) and responses to motion must comply with the section (a) general requirements. A sentence was added to clarify the “separate document” requirement, which does not include motions in the alternative.

Section (i) was amended to exclude motions that are joined by, agreed to, or unopposed by all parties from the certificate of conference requirement.

3. 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));

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Comment: This language was added in light item 2, the amendment to Local Rule CV-7(a).

4 LOCAL RULE CV-38 Jury Trial of Right

(a) **Jury Demand.** ~~Pleadings (i.e., complaint, answer, notice of removal) in which a jury is demanded shall bear the word “jury” at the top, immediately below the case number.~~ A party demanding trial by jury pursuant to Fed.R.Civ.P. 38(b) must do so by electronically filing a separate document styled as a “jury demand.”

Comment: Requiring the filing of a separate document makes it easier for attorneys and the court to identify cases in which a jury is demanded.

5. LOCAL RULE CV-72 Magistrate Judges

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(d) **Special Master Reports—28 U.S.C. § 636(b)(2).** Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Fed. R. Civ. P. 53(f)(3).

Comment: This change corrects a typographical error.

5. 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 ~~includes the word “jury” at the top of the notice for removal, immediately below the case number~~ (*see* Local Rule CV-38(a)); 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 ~~placing the word "jury" at the top of the notice of removal immediately below the case number~~ 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.

Comment: These changes harmonize this rule with the new jury demand requirement contained in Local Rule CV-38(a).

6. LOCAL RULE CV-83 Rules by District Courts; Judges' Directives

- (b) **Transferred or Remanded Cases.** Absent an order of the court to the contrary, no sooner than the ~~twentieth~~ 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.

Comment: This change harmonizes the rule with the national objective to, wherever possible, state time increments shorter than 30 days in multiples of seven.

7. APPENDIX B – LOCAL RULES OF COURT FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES

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RULE 4. REVIEW AND APPEAL

(e) Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties - 28 S.C. Section 636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. Section 636(c) and Subsection 1(h) of these rules, *supra*, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this Court. See 28 U.S.C. § 636(c)(3)(2009).

(2) Appeal to a District Judge.

(a) Notice of Appeal.

~~In accordance with 28 U.S.C. Section 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a district judge of this Court, rather than directly to the Court of Appeals. In such case, the appeal shall be taken by filing a notice of appeal with the clerk of court within 30 days after entry of the magistrate judge's judgment, but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of the judgment. For good cause shown, the magistrate judge or a district judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial under Rule 59, FRCP, is timely served, i.e. within 10 days after entry of the trial judgment, the time for appeal from the judgment of the magistrate judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure. A motion for new trial filed later than 10 days after entry of the final judgment is a Rule 60(b) motion and does not stop the time for a notice of appeal.~~

(b) Service of the Notice of Appeal.

~~The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel, to the party at his last known address. A certificate of service is not required with a notice of appeal.~~

(c) Record on Appeal.

~~The record on appeal to a district judge shall consist of the original papers and exhibits filed with the Court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the Court to minimize the~~

~~production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. Section 636(c)(4).~~

~~(d) Memoranda.~~

~~The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also file a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal.~~

~~(e) Disposition of the Appeal by a District Judge.~~

~~The district judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings. The district judge shall accept the magistrate judge's findings of fact, unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate judge to assess the credibility of the witnesses.~~

Comment: This section of Appendix B has been removed in light of Subsections (c) and (d) of Pub. L. 104-317, Section 207 (1996), which removed the statutory provision that allowed consensual appeals to a judge of the district court.

8. LOCAL RULE AT-2 ATTORNEY DISCIPLINE

(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 ~~ten~~ **fourteen** days after issuance unless sooner modified or stayed, disbaring 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.

Comment: This change harmonizes the rule with the national objective to, wherever possible, state time increments shorter than 30 days in multiples of seven.

9, APPENDIX J LOCAL ADMIRALTY RULES

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

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

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

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

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

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

LAR (e)(9) Appraisal. An order for appraisal of property so that security may be given or

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

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

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LAR (e) (13) Sale of Property.

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

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

- (1) The person whose bid is accepted shall immediately pay the Marshal the full purchase price if the bid is \$1000 or less.
- (2) If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three business days.
- (3) If an objection to the sale is filed within the period in LAR E(13)(b)(2), the bidder is excused from paying the balance of the purchase price until three business days after the sale is confirmed.
- (4) Payment shall be made by certified check or by cashier's check.

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(f) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three business days following the sale, serving the objection on all parties of record, the successful bidder, and the Marshal, and depositing a sum

with the Marshal that is sufficient to pay the expense of keeping the property for at least seven ~~calendar~~ days. Payment to the Marshal shall be by certified check or cashier's check. The court shall hold a hearing on the confirmation of the sale.

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

Comment: These changes harmonize the local admiralty rules with the national objective to, wherever possible, state time increments of less than 30 days in multiples of seven. Several instances of time increments of less than a week were left "as is," as they represent time-sensitive procedures regarding the seizure and sale of property, rather than deadlines for responsive documents.

10. ALL LOCAL RULES AND APPENDIXES

Any references in the local rules or rule appendixes to "business days," "calendar days," or "court days" will be changed to "days."

Comment: This is being done at the recommendation of the Judicial Conference Committee on Rules of Practice and Procedure.

Signed this 18 day of March, 2013.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
Chief Judge