

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).

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:

(7) Sealed Documents.

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

~~(A)~~(B) Unless authorized by statute or rule, a document in a civil case shall not be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

~~(B)~~(C) A motion to file document(s) under seal must be filed separately and immediately before from the document(s) sought to be sealed. If the motion to seal is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the document will be struck. A motion to seal that is filed as a sealed document does not need to include the certification specified in Section ~~(A)~~(B) above. See LOCAL RULE CR-49(b) (additional rules regarding the filing of sealed documents in criminal cases).

~~(C)~~(D) Documents requested or authorized to be filed under seal or *ex parte* shall be filed in electronic form. Service in “electronic form” shall be of documents identical in all respects to the documents(s) filed with the court; service copies shall not include encryption, password security, or other extra steps to open or access unless the same are found in the document as filed. All sealed or *ex parte* documents filed with the court must comply with the file size and other form requirements of LOCAL RULES CV-5(a) and CV-7. Counsel is responsible for serving documents under seal

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

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.

Comment: Revised section (a)(7)(A) was added at the request of the clerk's office because it makes it easier for clerk's office personnel to identify sealed documents. Former subsections (A) through (C) are now (B) through (D). Subsection C is further revised to clarify the procedure for motions to file documents under seal and to make uniform with the procedure for motions leave described below in the context of Local Rule CV-7(k).

2. 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.~~

~~(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.~~

Comment: The Judicial Conference has again recommended that FRCP 6(d) be amended to delete the addition of 3 days to response periods after service by electronic delivery. If implemented this year, Local Rule CV-6(a) will no longer serve its purpose of stopping attempts to shorten filing times by simultaneous hand service in addition to electronic delivery. Contingent on implementation of the federal rule change, this change to Local Rule CV-6(a) will become effective 12/1/2016 consistent with the Federal Rule amendments. References to Local Rule CV-6(a) contained in Rules CV-7(e) and 7(f) will likewise be deleted.

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

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

Comment: This portion of the rule has been cited as a source of confusion for judges and law clerks because of its potential conflict with the holding of *Johnson v. Pettiford*, 442, F.3d 917, 918-19 (5th Cir. 2006)(“We have recognized the power of district courts to adopt local rules requiring parties who oppose motions to file statements of opposition. But we have not approved the automatic grant, upon failure to comply with such rules, of motions that are dispositive of the litigation.”)(internal quotations omitted). Accordingly, the rule is amended to clarify that it creates a factual presumption, but the court must still assess the merits of any particular motion.

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

~~(k) Motions for Leave to File. Motions for leave to file a document should be filed separately and immediately before the document for which leave is sought. If the motion for leave to file is granted, the document will be deemed to have been filed as of the original date of its filing. If the motion is denied, the document will be struck or, in the case of motions to file a document exceeding page limitations, the excess pages and attachments cited only therein will not be considered by the court. The time for filing any responsive documents will run from the date of the order on the motion for leave. 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)~~**(1) 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.

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

Comment: Local Rule CV-7(k) is amended and former CV-7(l) deleted to create a single, uniform procedure for the filing of motions for leave, regardless the purpose for which leave is sought. Previously, the rules provided different procedures for motions for leave to exceed page limits versus all other motions for leave. The revised rule should eliminate confusion caused by the differing procedures.

5. LOCAL RULE CV-79 Records Kept by the Clerk

(a) Submission of Hearing/Trial Exhibits.

(1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial without 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 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. ~~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.~~

Comment: Local Rule CV-79(a)(3) is amended to require the submission of PDF copies of admitted exhibits at the conclusion of a hearing or trial. It is also edited to clarify its application to all admitted exhibits. Local Rule CV-79(a)(4) is deleted because duplicative of subsection 79(a)(3)'s requirements and to eliminate confusion created by the duplication. Under 79(a)(3), parties are required to provide the court hard and electronic copies of all admitted exhibits prior to or at the conclusion of a hearing or trial. These exhibits are then included by the courtroom deputy clerk in the record of the case, and are transmitted to the circuit court upon an appeal. Deleted section 79(a)(4) required counsel to file this same material, despite it having been admitted and filed in open court. This change corrects the issue and clarifies the procedure.

6. LOCAL RULE CR-47(b)(1) Motions

(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.

Comments: The Judicial Conference has again recommended that FRCrP 45(c) be amended to delete the addition of 3 days to response periods after service by electronic delivery. (See change to Local Rule CV-6 above). Contingent on implementation of the federal rule change, this change to Local Rule CV-47 will become effective 12/1/2016 consistent with the federal rule amendments.

7. LOCAL RULE CR-55 RECORDS

(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 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.~~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.~~

Comments: Local Rule CR-55 is amended to mirror the changes to Local Rule CV-79.

Signed May 24, 2016

FOR THE COURT.



RON CLARK
Chief Judge