GENERAL ORDER NO. 00-11

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 in all civil and criminal cases that are filed in this court on or after December 1, 2000:[1]

1. LOCAL RULE CV-1 Scope and Purpose of Rules

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. ~~govern the procedure in all civil actions in the United States District Court for the Eastern District of Texas.~~ 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 Judicial Circuit.

2. LOCAL RULE CV-3 Commencement of Action

Habeas Corpus and §2255 Motions. The clerk may require that petitions for a writ of habeas corpus and motions filed pursuant to 28 U.S.C. §2255 be filed on a set of standardized forms approved by this court and supplied, upon request, by the clerk without cost, to the petitioner. Petitioners who are not proceeding in forma pauperis must pay a $5.00 filing fee. See 28 U.S.C. §1914(a).

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

(a) **Filing of Papers Generally**. The original and one copy of pleadings, motions and other papers shall be filed with the clerk (*but see* Local Rule CV-4(b) (two copies of summons and complaint required when serving Texas Secretary of State); Fed.R.Civ.P. 4(i) (extra copies required when serving the United States as a party); and ~~Local Rule CV-26(a)~~ Fed. R. Civ. P. 5(d) (discovery or disclosure materials under Fed.R.Civ.P. 26(a)(1) and (a)(2), including notices of depositions, are not filed unless by order of the court)). Except where a judge has not yet been assigned to a case, pleadings, motions and other papers shall include the case caption, the last name of the

[1]New language appears in underlined text; deleted language appears in ~~strikeout~~ text. These local rule amendments will be posted forthwith on the court's Internet website, found at *www.txed.uscourts.gov*.

assigned district judge or the appropriate magistrate judge, in the event that a case has been referred to a magistrate judge for disposition.

~~(1) **Non-filing of Discovery Materials.** Discovery or disclosure and responses thereto shall not be filed unless by order of the court. Notices of deposition shall not be filed with the clerk, and shall not be accepted for filing by the clerk except as an attachment to an objection to the taking of the deposition and/or motion thereupon.~~

(b) **Filing by Facsimile**. Filing by facsimile will only be allowed in situations determined by the court to be of an emergency nature or other compelling circumstance. The clerk shall not accept documents transmitted by facsimile equipment unless prior authorization has been obtained from the judge or magistrate judge to whom the case has been assigned, or at that judge's personal direction, with the exception of emergency pleadings in capital offense cases.

(1) Authorized facsimile transmissions must be faxed directly to the clerk's office. Additionally,

(A) the party filing the document must mail the original signed document to the clerk on the same day it is sent via facsimile, along with any reasonable fee established by the clerk; and

(B) absent express judicial permission, documents filed by facsimile transmission shall not exceed 15 pages in length.

Failure to comply with these requirements may result in the pleading being stricken from the record.

(2) A facsimile pleading is deemed to be filed as of the date it is received by the court. The filed facsimile shall have the same force and effect as the original. The clerk shall assign the original signed pleading the same document number as the facsimile pleading.

(3) The clerk shall not accept for facsimile filing an original complaint, a removal from state court, or any other document constituting a new action.

(c) **Filing by After-Hours Depository.** The court maintains after-hours document depositories at the courthouses in Beaumont, Lufkin, Tyler, Marshall, Sherman and Texarkana. Any pleadings or other documents that are marked received using the electronic time stamp contained in the depository and then placed in the box will be entered on the docket as of the time and date marked as received to the depository.

(d) **Electronic Filing.** This section applies to the electronic filing of pleadings and papers.

(1) A pleading or paper may not be filed with the clerk by direct electronic transmission (i.e., from a party's or attorney's computer to the district court's computer database) without the prior authorization of the judge or magistrate judge assigned to that case.

(2) An electronic filing is complete as of the date and time it is received by the clerk. Service of pleadings or papers by electronic transmission on other parties or attorneys in the case, if permitted by the court, is also deemed complete as of the date and time the electronic transmission is received.

(e) **Certificates of Service**. The certificate of service required by Fed.R.Civ.P. 5(d) shall indicate the date and method of service.

(f) **Service by Facsimile.** Parties may serve copies of pleadings and other case-related documents to other parties by facsimile in lieu of service and notice by mail. Such service is deemed complete as of the telephonic transfer to the recipient's facsimile machine or telecopier. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

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

(a) **Generally**. All motions, unless made during a hearing or trial, shall be in writing and conform to the requirements of Local Rules CV-5 and CV-10. ~~Every motion shall be signed by the attorney-in-charge, or with his or her permission. See Local Rule CV-11. Counsel for the movant must indicate in the motion (1) that they have 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.~~ With each motion there shall also be filed and served a proposed order for the judge's signature. The order shall be a separate paper endorsed with the style and number of the cause.

(1) **Dispositive Motions.** Dispositive motions ~~and briefs~~ 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. See Rule CV-56 regarding attachment to motions for summary judgment and responses thereto. Any reply brief to an opposed dispositive motion filed pursuant to section (f) of this rule shall not exceed ten pages, including ~~authorities and~~ attachments.

(2) **Non-dispositive Motions.** Nondispositive motions shall not exceed fifteen pages ~~including~~ excluding ~~authorities and~~ attachments, unless leave of court is first obtained. Likewise, a party opposing a nondispositive motion shall limit the response to the motion to fifteen pages, ~~including~~ excluding ~~authorities and~~ attachments, unless leave of court is first obtained. Any reply brief to an opposed non-dispositive motion filed pursuant to section (f) of this rule shall not exceed five pages, including ~~authorities and~~ attachments.

(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. Any attached materials should have the cited portions highlighted in the copy provided to the court, 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 attached materials should be attached to the motion or the response.

~~(1) Discovery or Disclosure Documents. When discovery or disclosure documents or portions thereof are needed in support of a motion, those portions of the discovery or disclosure which are relevant to the motion shall be submitted with the motion and attached thereto as exhibits. See Rule CV 56.~~

(c) **~~Brief~~ Briefing Supporting Motions**. The motion and any briefing shall be contained in one document. ~~Motions may be accompanied by a brief.~~ The ~~brief~~ briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. ~~Briefs are~~ 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.. ~~All briefs must be filed concurrent with the motion they support~~.

(d) **Response and ~~Brief~~ Briefing**. ~~If a party opposes a motion, he shall file his~~ The response and any briefing shall be contained in one document. A party opposing a motion shall file the response, ~~brief~~, any briefing, and supporting documents ~~as are then available~~ within the time period prescribed by section (e) of this rule. A response shall be accompanied by a proposed order conforming to the requirements of section (a) of this rule. ~~Briefs~~ 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 ~~Supporting Documents and Brief~~. Response.** A party opposing a motion has ~~10~~ 15 days from the date the motion was served in which to serve and file a response and any supporting documents, ~~and briefs~~ after which the court will consider the submitted motion for decision. See Fed.R.Civ.P. 6. Any party may separately move for an order of this court lengthening or shortening the period within which a response ~~supporting documents and briefs~~ may be filed.

(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 within 5 days from the date the response is served.

~~(g) **Service**. All parties shall serve copies of their motion papers upon all other parties to the action. A certificate of service attached to the papers as provided for in Local Rule CV-10 shall indicate the time and method of service~~.

(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) **Certificates of Conference.** ~~Discovery Motions. Any judge of this court may refuse to hear a motion relating to pre-trial discovery unless the movant advises the court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter by agreement.~~ All motions must contain a certificate stating (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.

(i) **Re-urged Motions in Transferred/Removed 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 also Local Rule CV-81(d).

~~(j) **Determination of Motions**. Non-dispositive motions filed by the parties shall be determined by the judicial officer as soon as practicable, and in any event within thirty days after filing of the response or reply, if any. The court shall employ its best efforts to dispose of dispositive motions such as summary judgment within sixty days.~~

5. LOCAL RULE CV-10 Form of Pleadings

(a) **Generally.** When offered for filing, all papers shall ~~be~~:

(1) be endorsed with the style and number of the action;

(2) contain a caption containing the name and party designation of the party filing the paper and a statement of the character of the paper clearly identifying each included pleading, motion or other paper ~~a statement of the character of the paper~~ (e.g., ~~COMPLAINT, MOTION TO DISMISS~~ Defendant John Doe's Answer and Motion to Dismiss under Rule 12(b)(6) [note: see Local Rule CV-38(a) for cases involving jury demands];

(3) be signed by the attorney in charge, or with his or her permission, and contain beneath the signature line his or her name, bar I.D. number, post office address, ~~and~~ telephone number and facsimile number.

(4) be plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, fastened at the top only, and punched at the top center with two holes 2 7/8 inches apart;

(5) be ~~No brief or motion shall be filed with the court with~~ in a font ~~or typeface~~ no smaller than twelve (12) point type ~~and 12 characters per inch~~.

~~A certificate of service must be attached to and made a part of all papers when required by the Federal Rules of Civil Procedure.~~

(b) **No Covers.** "Blue backs" and other covers are not to be submitted with papers.

(~~b~~ c) **Deficient pleadings/documents.** The clerk shall monitor papers for compliance with the federal and local rules as to format and form. If the paper sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity 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 papers should be made part of the record.

6. LOCAL RULE CV-16 Pretrial Conferences; Scheduling; Management

(a) ~~**Case Management Scheduling Conference**~~ **Scheduling Conferences.** Within sixty (60) 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 by telephone at the judge's discretion.

~~(1) **Timing.** Within 120 days after issues have been joined, the judicial officer assigned to cases in Tracks 3, 4, 5 and 6 shall convene a management conference.~~

~~(2) **Attorney Responsibility Prior to Management Conference.** Prior to the management conference, attorneys for each party shall make the required disclosures, shall have completed the depositions, if any, of the parties, and shall have conferred with the other attorneys in the action concerning stipulations of fact and each of the items contained in section (3) below.~~

~~(3) **Scope of Management Conference.** At the management conference, the judicial officer shall address each of the following items:~~

~~(A) confirm or modify track assignment;~~
~~(B) establish deadlines for filing of motions;~~
~~(C) determine issues to be tried;~~
~~(D) identify witnesses who will testify at trial;~~
~~(E) establish deadlines for approval of objections to proposed expert witnesses;~~
~~(F) determine the efficacy of referring the case to alternative dispute resolution;~~
~~(G) determine feasibility of a settlement conference and the timing of such conference, if any;~~
~~(H) establish a firm trial date;~~
~~(I) consider establishing a time limit for trial;~~
~~(J) discuss litigation cost estimates with the parties and counsel;~~
~~(K) discuss any other matter appropriate for the case.~~

~~(4) **Attendance.** The management conference shall be attended by an attorney of record with full authority to make decisions and agreements that bind the client. Except in extraordinary circumstances, the court expects that attorney to be the one who will actually try the case. Attendance by clients at the management conference is not required unless otherwise ordered by the court.~~

(b) **Pretrial Orders.** Pretrial orders ~~shall be prepared for each case in Tracks 3, 4 and 5. These pretrial orders~~ will be standardized and used by each ~~judicial officer~~ judge. The standardized form can be found in Appendix D of these rules.

~~(c) **Alternative Dispute Resolution.** If the judicial officer determines that the case probably will benefit from alternative dispute resolution, the judicial officer shall have discretion to refer the case to:~~

~~(1) court-annexed mediation in accordance with the court's mediation plan (see Appendix H);~~

~~(2) voluntary mini-trial or summary jury trial before a judicial officer; or~~

~~(3) other alternative dispute resolution programs designated for use in this district.~~

~~(d) **Docket Control Order Modification**. The docket control order produced at the management conference may be modified at any time thereafter by the judicial officer to whom the case is assigned.~~

7. LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure [2]

[2]For the reader's convenience, shown below are the provisions that remain after the specified changes, appropriately renumbered and re-headed:

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

~~(a) **Tracking and Presumptive Discovery Limits**. Upon the filing of each case, the court will assign the case to one of six tracks. The parties may submit an agreed notice of assignment of the case to a track lower than the one to which it is initially assigned by the court. Upon submission of such notice, signed by counsel for all parties, the case will remain on the track agreed to unless modified by the court at the management conference. Each track will carry presumptive discovery limits as set forth below. These limits shall govern the case and may not be increased by the parties or their attorneys by agreement or otherwise. If any additional change of track number is necessary it~~

---

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 Claim or Defense. The following observations are provided for counsel's guidance in evaluating whether a particular piece of information is "relevant to the claim or defense of any party:"

(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 judge by dialing the hotline number listed above for any case in the district and get an immediate 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.

should be taken up at the management conference at which time the judicial officer to whom the case is assigned may, upon good cause shown, expand or limit the discovery.

TRACK ONE: No discovery.

TRACK TWO: Disclosure only.

TRACK THREE: Disclosure plus 25 interrogatories, 25 requests for admission, depositions of the parties, and depositions on written questions of custodians of business records for third parties.

TRACK FOUR: Disclosure plus 25 interrogatories, 25 requests for admissions, depositions of the parties, depositions on written questions of custodians of business records for third parties, and three other depositions per side (i.e., per party or per group of parties with a common interest).

TRACK FIVE: Disclosure plus a discovery plan tailored by the judicial officer to fit the special management needs of the case.

TRACK SIX: Disclosure plus a discovery plan as determined by the judicial officers to fit the special management needs of mass tort and other large groups of similar cases.

(b) **Initial Disclosure.**

(1) Each party shall, without awaiting a discovery request, provide to every other party:

(A) The name and, if known, the address and telephone number of each person likely to have information that bears significantly on any claim or defense, identifying the subjects of the information, and a brief, fair summary of the substance of the information known by the person;

(B) A copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense [Note: by written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials];

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) For inspection and copying as under Rule 34, any insurance agreement under

which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) There is no duty to disclose privileged documents. Privileged documents or information shall be identified and the basis for the claimed privilege shall be disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(F) Authorizations.

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

(ii) 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.

(iii) Copies of any records obtained with authorizations provided pursuant to sections (i) or (ii) 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.

(2) Timing of Disclosure. Unless the judicial officer directs otherwise, or the parties otherwise stipulate with the judicial officer's approval, these disclosures shall be made as follows:

(A) by a plaintiff within 30 days after

(i) service of a Rule 12(b) motion or
(ii) service of an answer to its complaint or
(iii) removal of the action from state court

~~whichever occurs first;~~

~~(B) by a defendant within 30 days, or within 45 days by agreement of the parties, after~~

~~(i) serving a Rule 12(b) motion or~~
~~(ii) serving its answer to the complaint or~~
~~(iii) removal of the action from state court, provided that service of process has been perfected upon that defendant~~

~~whichever occurs first; and, in any event~~

~~(C) by any party that has appeared in the case within 30 days after receiving from another party a written demand for accelerated disclosure accompanied by the demanding party's disclosure.~~

~~(3) Bears Significantly On.~~ (d) Relevant to the Claim or Defense. The following observations are provided for counsel's guidance in evaluating whether a particular piece of information ~~"bears significantly on"a claim or defense"~~ is "relevant to the claim or defense of any party:"

(A) It includes information that would not support the disclosing parties' contentions;

(B) 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;

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

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

(E) It is information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense;

~~(F) All information that bears significantly on a claim or defense is relevant but all relevant information does not necessarily bear significantly on a claim or defense.~~

~~(4)~~ **(a) No Excuses.** ~~A party is not excused from disclosure because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.~~ Absent court order to the contrary, a party is not excused from ~~disclosure~~ 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 ~~disclosure~~ discovery to those

materials necessary to decide the issue of qualified immunity.

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

~~(1) In addition to the disclosures required in section (c), each party shall disclose to every other party the identity of any person who may be used at trial to present evidence under Rules 702, 703, and 705, Federal Rules of Evidence. This disclosure shall be in the form of a written report prepared and signed by the witness that includes a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information considered in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.~~ 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. ~~In addition, the report must include a list of all publications authored by the witness within the preceding ten years and the compensation to be paid for the study and testimony in this case. On motion of the party, an expert witness not retained or employed may be excused from filing the required report with approval of the court.~~

~~(2) Unless the judicial officer designates a different time, this disclosure shall be made at least 90 days before the date the case has been directed to be ready for trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another under section (d)(1), then disclosure shall be made within 30 days after such disclosure is made.~~

~~(3)~~ (2) By order in the case, the ~~judicial officer~~ 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.

~~(d) **Pretrial Disclosure**. Each party shall provide to the court reporter a copy of its pretrial disclosures as required by Fed. R. Civ. P. 26(a)(3).~~

~~(1) In addition to disclosures required in the preceding sections, each party shall provide to every other party and the court reporter information regarding the evidence that the disclosing party may present at trial as follows:~~

~~(A) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.~~

~~(B) The designation of those witnesses whose testimony is expected to be presented~~

~~by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.~~

~~(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.~~

~~(2) Timing. Unless otherwise directed by the judicial officer, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.~~

~~(e) **Form of Disclosures, Meeting, Filing.** The disclosures required by the preceding sections shall be made in writing and signed by the party or counsel in accordance with Rule 26(a)(4) and 26(g) and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by sections (b) and (d); otherwise such disclosures shall be served as provided by Rule 5, Fed.R.Civ.P.~~ **(c) Notice of Disclosure.** The parties shall promptly file a ~~prompt~~ notice with the court that the ~~required disclosure has~~ disclosures required under Fed.R.Civ.P. 26(a)(1) and (a)(2) have taken place.

~~(f) **Duty to Supplement**. After disclosure is made pursuant to this article, each party is under a duty to immediately supplement or correct its disclosures if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or incorrect when made, or is no longer complete or true.~~

~~(g)~~ (e) **Discovery Hotline** - (903) 590-1198. The court shall provide a ~~judicial officer~~ judge on call during business hours to rule on discovery disputes and to enforce provisions of these rules. Counsel may contact the ~~judicial officer~~ judge by dialing the hotline number listed above for any case in the district and get an immediate 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.

8. LOCAL RULE CV-30 Depositions Upon Oral Examination

~~Depositions of witnesses or parties shall be taken on weekdays and may not last longer than six hours per witness, unless otherwise authorized by the court.~~ In cases where there is a neutral non-party witness or a witness whom all parties must examine, the ~~six hour~~ time limit shall be divided equally among plaintiffs

and defendants. Depositions may be taken after 5:00 p.m., on weekends, or holidays with approval of a ~~judicial officer~~ judge or by agreement of counsel. ~~Attorneys are prohibited from instructing the deponent not to answer a question or how to answer a question, except to assert a recognized privilege. Other objections shall be made at trial.~~ Unless permitted by Fed.R.Civ.P. 30(d)(1), a party may not instruct a deponent not to answer a question. Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, nonresponsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived.

9. LOCAL RULE CV-34 Production of Documents and Things.

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

(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.

10. 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.

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

11. LOCAL RULE CV-45 Subpoena

Attorneys shall prepare all subpoenas. See Fed.R.Civ.P. 45(a)(3).

12. LOCAL RULE CV-79 Books and Records Kept by the Clerk

(a) **Disposition of Exhibits And/or Sealed Documents by the Clerk.** Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:

(1) ~~Unsealed~~ Exhibits. Destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial;

(2) Sealed ~~exhibits/~~documents. Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

(b) **Removal of Papers, Records, etc.** The clerk shall not allow the original copy of any papers, records, proceedings, or any other paper, writing or memorandum, belonging to or related to and filed in any civil action in this court to be removed from the clerk's office without permission of the judge to whom the case is assigned.

(c) **Submission and Disposition of 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) Trial exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. If parties wish, additional copies of trial exhibits may be submitted in binders for the court's use.

(d) **Hazardous Papers 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) papers 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.

13. 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~~; however,~~ provided the removing party or parties ~~shall~~ includes the word "jury" at the top of the notice for removal, immediately below the case number (see 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 (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; and

(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).

(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.

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

~~(a) **Attorney's Fees**. The assumption that underlies the substance of the Civil Justice Reform Act is that implementation of a plan that substantially reduces legal activity during discovery will result in cost reduction for litigants who pay for legal services by the hour. Whether such presumed reductions become a reality remains to be seen. The court shall adopt methods to evaluate the effectiveness of the court's plan in this respect. However, no such reduction from these measures will inure to the benefit of litigants who retain counsel on a contingency fee basis. The court, therefore, adopts the following maximum fee schedule for contingency fee cases (whether filed originally in this court or removed from state court):~~

~~(1) Contingent fees in non-statutory cases: A fee of 33-1/3% of the total award or settlement.~~

~~(2) Expenses: Expenses incurred by attorneys that are directly related to the costs of litigation of individual cases shall be deducted from the award or settlement before any calculation or distribution is made for attorneys' fees. No deduction is permitted for general office overhead expenses. Moreover, attorneys are prohibited from charging interest on any money advanced for expenses.~~

~~(3) The court may modify the fee in exceptional circumstances.~~

~~(4) In cases where statutory attorneys' fees are recoverable, such as civil rights cases, the court shall approve a reasonable fee.~~

~~(b)~~ **Docket Calls.** Traditional docket calls are abolished. Each ~~judicial officer~~ judge shall endeavor to set early and firm trial dates which will eliminate the need for multiple-case docket calls.

15. LOCAL RULE CR-6 The Grand Jury

(a) **Selection of Grand Jurors**. Grand jurors shall be selected at random in accordance with a plan

adopted by this court pursuant to applicable federal statute and rule. See Appendix E.

(b) **Grand Jury Subpoenas.** Sealed grand jury subpoenas shall be kept by the clerk for three (3) years from the date the witness is ordered to appear. After that time, the clerk may destroy the subpoenas.

16. 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.

17. LOCAL RULE CR-55 Records:

(a) **Removal of Papers, Records, etc.** The clerk shall not allow original copies of any papers, records, etc. in a criminal case to be removed from the clerk's office except upon order of the judge to whom the case is assigned.

(b) **Disposition of Exhibits And/or Sealed Documents by the Clerk.** Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:

(1) ~~Unsealed~~ Exhibits. Destroy any sealed or unsealed exhibits filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial. Sealed exhibits submitted in miscellaneous cases to obtain pen registers, wiretaps, etc. will be maintained in the court's vault for three (3) years, if not previously retrieved by the U.S. Attorney and incorporated into a criminal case. At the end of this time, the sealed exhibits will be destroyed;

(2) Sealed ~~exhibits/~~documents. Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

(c) **Submission and Disposition of 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.

(2) Trial exhibits shall be properly marked, but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. If parties wish, additional copies of

trial exhibits may be submitted in binders for the court's use.

18. LOCAL RULE AT-1 Admission to Practice

(a) An attorney who has been admitted to practice before the Supreme Court of the United States, or a United States Court of Appeals, or 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 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, completed application forms 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 by permission of the judge before whom the case is pending. 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 present to the judge before whom the case is pending a motion requesting permission to appear. Such motion shall be accompanied by a $10.00 local fee. An order shall then be entered by this court granting or denying the motion.

(e) All active attorneys who are admitted to practice before this court shall be assessed an annual bar membership fee. State and federal government attorneys are exempted from paying the fee, however, as long as they are in government service. The fee will be collected triennially, with the amount to be determined by the court prior to each collection period. All attorneys who have not paid the fee by the deadline shall be suspended from practice without further order of the court.

Upon payment of outstanding fees, any attorney suspended for non-payment of fees will be immediately reinstated without order of the court.

19. LOCAL RULE AT-1 Admission to Practice

(a) An attorney who has been admitted to practice before the Supreme Court of the United States, or a United States Court of Appeals, or 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.

~~(2)~~ (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, completed application forms 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 by permission of the judge before whom the case is pending. 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 present to the judge before whom the case is pending a motion requesting permission to appear. The applicant must state in the motion 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. Such motion also shall be accompanied by a $10.00 local fee. An order shall then be entered by this court granting or denying the motion.

20. 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:[3]

(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 towards opposing lawyers.

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

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

(J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling

---

[3]The standards enumerated here are set forth in the *en banc* opinion in *Dondi Properties Corp. v. Commerce Savings and Loan Association*, 121 F.R.D. 284 (N.D. Tex. 1988).

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.

21. Appendix B: Assignment of Duties to United States Magistrate Judges

* * * * *

(I) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties - 28 U.S.C. Section 636(c).

(1) **General Consent.**

Upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in a jury or non-jury civil matter which is filed in this court, including the conducting of a trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. Section 636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

(a) 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. Section 636(c)(2)

(2) **Limited Consent.**

Pursuant to 28 U.S.C. Section 636(c), if all parties consent, a district judge may not only refer the entire case but may also refer a dispositive motion or any other portion of the case to a magistrate judge for final determination.

* * * * *

22. Appendix D: Joint Final Pretrial Order.

* * * * *

L. CERTIFICATIONS

The undersigned counsel for each of the parties in this action do hereby certify and acknowledge the following:

(1) Full and complete disclosure has been made in accordance with the Federal Rules of Civil Procedure, ~~the Local Rules~~ and the Court's orders;

(2) Discovery limitations set forth in the Federal Rules of Civil Procedure, the Local Rules, and the Court's orders have been complied with and not altered by agreement or otherwise;

~~(3) Contingent attorneys' fees limitations set forth in the Local Rules have been complied with and not altered by agreement or otherwise;~~ and

(3 ~~4~~) Each exhibit in the List of Exhibits herein:
(a) is in existence;
(b) is numbered; and
(c) has been disclosed and shown to opposing counsel.

* * * * *

Signed this __27th___ day of November, 2000.

FOR THE COURT:

By:

_____/s/_____
RICHARD A. SCHELL
Chief Judge