

GENERAL ORDER 07-9

**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 (see 28 U.S.C. §2071):¹

1. LOCAL RULE CV-3 Commencement of Action

(a) 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). There is no filing fee for § 2255 motions filed by prisoners in federal custody.

(b) Page Limitation for Case Commencement Documents Filed by Pro Se Prisoners.
Absent permission obtained from the presiding judge, all case commencement documents and motions filed by pro se prisoners are limited to twenty (20) pages, including attachments.

Comment: This provision is intended to put reasonable page limitations on case commencement documents and motions filed by pro se prisoners. Some of these documents currently exceed eighty pages.

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

2. **LOCAL RULE CV-4 Complaint, Summons and Return**

- (a) At the commencement of the action, counsel shall prepare and file the civil cover sheet, Form JS 44, along with the complaint. When filing a patent, trademark or copyright case, counsel is also responsible for ~~preparing and submitting to the clerk electronically filing an AO Form 120 or 121, “Report on the Filing or Determination of an Action Regarding a Patent or a Trademark,” or AO Form 121, “Report on the Filing or Determination of an Action Regarding a Copyright”~~ and submitting a copy of the applicable form to the United States Patent Office or United States Copyright Office.

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- (c) Service of civil process shall not be executed by the United States marshal except for government initiated process, extraordinary writ or when ordered to do so by a judge.
- (1) The attorney (or any plaintiff if acting pro se) seeking service of civil process upon a pleading filed in this district will be responsible for designating a person over the age of 18 years who is not a party in the case to make service.
- (2) Service may be made by such designated person by personal service pursuant to Rule 4, Fed.R.Civ.P. or by mailing a copy of the pleadings and summons by registered or certified mail to the person (restricted to addressee only) with return receipt requested, in accordance with Texas law.

Comment: The section (a) amendment provides a more thorough and streamlined alternative to the existing procedure.

The section (c)(2) amendment is intended to conform the local rule to existing law.

3. **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 civil case, the initial documents, including the complaint, the civil cover sheet, the service of the summons and the notice of removal (Note: although not yet required, counsel are strongly encouraged to file case opening documents electronically and pay initial filing fees online using the court's CM/ECF system);~~

~~(B) 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;~~

~~(C) filing from pro se litigants (prisoner and non-prisoner);~~

- (~~D~~ C) consents to proceed before a magistrate judge;
- (~~E~~ D) proof of service of the initial papers in a civil case;
- (~~F~~ E) papers received from another court under Fed.R.Crim.P. 5(c), Fed.R.Crim.P. 20 and Fed.R.Crim.P. 40 ;
- (~~G~~ F) 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 (*but see* Local Rule CV-80(a));
- (~~H~~) ~~notice of appeal (Note: although not yet required, counsel are strongly encouraged to file notices of appeal electronically and pay appellate filing fees online using the court's CM/ECF system);~~
- (~~I~~ G) application to appear pro hac vice; and
- (~~J~~ H) any document pertaining to presentence investigation reports in criminal cases.

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

- (A) Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice

of Electronic Filing from the court, constitutes filing of the document for all purposes, and constitutes entry of the document on the docket kept by the clerk. Receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.

- (B) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.
- (C) Service is deemed completed at the date and time stated on the Notice of Electronic Filing from the court, except that documents filed electronically after 5 p.m. ~~local time of the recipient~~ Central Time shall be deemed served on the following day.
- (D) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

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(7) Sealed Documents.

- (A) Unless authorized by statute or rule, a document in a civil case shall not

be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

- (B) A motion to file document(s) under seal must be filed separately from the document(s) sought to be sealed. A motion to seal that is filed as a sealed document does not need to include the certification specified in section (A) above. For additional rules regarding the filing of sealed documents in criminal cases, see Local Rule CR-49(b).
- (C) Documents requested or authorized to be filed under seal ~~or filed ex parte~~ shall be filed in electronic form. Documents requested or authorized to be filed ex parte shall be filed with the clerk in .pdf format on a CD-ROM disk. The content of the CD-ROM disk will not be uploaded to the court's CM/ECF system. The CD-ROM disk will be forwarded to the presiding judge for his or her review. Attorneys must contact the clerk's office to obtain permission to file documents under seal ~~or ex parte~~ using the court's CM/ECF system. All sealed or ex parte documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel, and may do so in electronic form, and 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 (see Local Rule CV-11), who is responsible for distributing the order to all other counsel of

record for that party.

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

Comment: The deletion of existing sections (a)(1)(A) and (a)(1)(H) makes the e-filing of civil complaints and notices of appeal by attorneys mandatory. Attorneys have been voluntarily e-filing notices of appeal and paying appellate filing fees online in Texas Eastern for about a year. Attorneys generally have reacted favorably to filing notices of appeal online, since it reduces the need to process paper and speeds the appellate case opening process. Under new procedures established by the clerk's office, attorneys now will be able to control the exact time that they electronically file civil complaints. Under these procedures, the clerk's office will assign a judge to the case after counsel opens the case and e-files the complaint.

The changes to sections (a)(3)(C) and (d) of this rule clarify how the time of filing and the time of service are calculated.

The change to section (a)(7)(C) ensures that electronic access to ex parte documents is limited to the presiding judge.

4. **LOCAL RULE CV-7 Motions Practice**

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- (k) **Motions for Leave to Exceed Page Limitations.** A document that exceeds a page limitation established by these rules must be accompanied by 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.
- (l) **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 event code entitled “emergency motion;” and (3) the chambers of the presiding judge is notified, either by telephone, e-mail or fax, that an emergency motion has been filed.

Comment: New section (k) streamlines the procedure regarding motions for leave to file overlength documents. Under the existing procedure, the overlength document is actually filed twice: once when it accompanies the motion for leave to file, and twice when it gets “officially” filed after the motion for leave to file is granted. Under the new procedure, if the motion for leave to exceed is denied, the overlength portion of the document and attachments will not be considered by the court. This encourages counsel to be concise and to put their strongest argumentation in the front part of their motion or response.

New section (l) is designed to provide the court with additional signals when a motion involves a real emergency.

5. 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) contain 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 each included pleading, motion or other document (e.g., 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][counsel are encouraged to file pleadings, motions and other documents separately whenever possible, i.e., do not include a motion and a response, or an answer and a motion in the same document];
- (3) be signed by the attorney in charge, or with his or her permission;
- (4) when filed by paper, be plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, fastened at the top only, and punched at the top center with two holes 2 7/8 inches apart; and
- (5) be double spaced and in a font no smaller than twelve (12) point type.

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~~(c) **Redaction of Personal Identifiers.** Whenever possible, the parties should refrain from including the following personal identifiers from all documents filed with the court:~~

~~(1) **Social Security numbers.** If an individual's Social Security number must be included in a document, only the last four digits of that number should be used.~~

~~(2) **Names of minors.** A minor should only be identified by initials, unless the minor's parent, guardian or next friend consents to the use of the minor's full name, or uses it in a document filed with the court. Where initials are used for identification, they are sufficient for all purposes for identification~~

~~(3) **Dates the birth.** If an individual's date of birth must be included in a document, only the year should be used.~~

~~(4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.~~

~~(5) **Home addresses.** If a home address must be included, only the city and state should be listed.~~

~~The purpose of this rule is to avoid publication of sensitive personal information in court documents that are available on the Internet. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk will not review each pleading for compliance with this rule.~~

Comment: The new language in section (a) is designed to exclude preexisting exhibits from the formatting requirements of this rule, e.g., double spacing of documents. The new language in section (a)(5) was added to ensure that electronically-filed documents, excluding preexisting attachments, are filed in a double-spaced format.

Former section (e) was deleted, as it substantially duplicates new Fed.R.Civ.P. 5.2.

6. LOCAL RULE CV-11 Signing of Pleadings, Motions and Other Documents

Lead Attorney.

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

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Comment: This change is intended to simplify and clarify the existing procedure for designating a lead attorney.

7. LOCAL RULE CV-54 Judgments; Costs

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(b) Procedure for Contested Bill of Costs. Before filing a bill of costs, a party must:

(1) submit the proposed bill of costs to opposing counsel for counsel's review in light of the applicable law; and

(2) if there are any areas of disagreement, meet and confer with opposing counsel in an effort to submit an agreed bill of costs to the Court. If the parties have a legitimate dispute on which they cannot agree, the party seeking costs must file a bill of costs indicating areas of agreement and disagreement. The bill must contain a certificate by the party

seeking costs certifying compliance with the provisions of this rule.

Comment: New section (b) provides guidance as to how to proceed when a bill of costs is contested.

8. LOCAL RULE CV-56 Summary Judgment

Summary Judgment Procedure.

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- (c) **Ruling.** In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the ~~“Statement of Genuine Issues”~~ response filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to determine whether the record contains an undesignated genuine issue of material fact for trial before entering summary judgment.

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Comment: The amendment in section (c) provides clarifying language.

9. LOCAL RULE CV-77 District Courts and Clerks

Notice of Orders, Judgments and Other Filings. The clerk may serve and give notice of orders, judgments and other filings by electronic mail in lieu of service and notice by

conventional mail, to any person who has signed a filed pleading or document and provided an e-mail address with his/her pleadings as specified in Local Rule CV-11(c)(1)(F). Any other attorney who wishes to receive notice of judicial orders, judgments and other filings must file a notice of appearance of counsel with the court.

By providing the court with an e-mail address, the party submitting the pleadings is deemed to have consented to receive service and notice of judicial orders and judgments from the clerk by e-mail. ~~Persons~~ Lead attorneys who wish to be excluded from receiving judicial notices by e-mail may do so by filing a motion with the court. Non-lead attorneys who wish to be excluded from e-mail noticing may do so by filing a notice with the court.

- (A) Notice of judicial orders, judgments and other filings is complete when the clerk obtains electronic confirmation of the receipt of the transmission. Notice by e-mail by the clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

Comment: This amendment makes it easier for non-lead attorneys to exclude themselves from e-mail noticing, should they so desire.

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

(a) **Submission 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. Additional copies of trial exhibits may be submitted in binders for the court's use.
- (3) The parties shall provide letter-sized copies of pictures of any physical or oversized exhibit prior to the conclusion of trial. The Court may order parties to provide CD-ROM disk(s) containing .pdf copies of all exhibits that were admitted by the court. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

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Comment: This amendment gives the presiding judge the option of requiring trial counsel to provide CD-ROM disk(s) containing .pdf copies of all exhibits admitted by the court. This option saves the court the time and expense of storing and shipping voluminous trial exhibits. The U.S. Supreme Court and Fifth and Federal Circuits recently indicated that they would accept trial exhibits submitted in .pdf format on CD-ROM.

11. LOCAL RULE CR-47 Motions

~~Motion practice in criminal cases shall conform to the requirements of Local Rule CV-7.~~

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

(b) Form and Content of a Motion. All motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and be accompanied by a separate proposed order for the judge's signature. The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Dispositive motions– those which could, if granted, result in the dismissal of an indictment or counts therein or the exclusion of evidence– shall contain a statement of the issues to be decided by the Court. Responses to dispositive motions must include a response to the movant's statement of issues. All motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format. All other documents, including attachments and exhibits should be in "searchable PDF" form wherever possible.

(1) Page Limits

(A) Dispositive Motions. Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed ten pages, excluding attachments.

(B) Non-dispositive Motions. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed five pages, excluding attachments.

(2) Briefing Supporting Motions and Responses. The motion and any briefing shall

be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Likewise, the response and any briefing shall be contained in one document. Such briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies.

(3) Certificates of Conference. Except as specified below, all motions must be accompanied by a “certificate of conference.” It should be placed at the end of the motion following the certificate of service. The certificate must state (1) that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention and (2) whether the motion is opposed or unopposed. Certificates of conference are not required of pro se litigants (prisoner or non-prisoner) or for the following motions:

- (A) motions to dismiss;
- (B) motions *in limine*;
- (C) motions for judgment of acquittal;
- (D) motions to suppress;
- (E) motions for new trial;
- (F) any motion captioned as “joint”, “agreed ” or “unopposed.” and
- (G) any motion permitted to be filed *ex parte*.

(c) Timing of a Motion.

(1) Responses. A party opposing a motion has 12 calendar days from the date the motion was served in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision. Three days shall

be added to the prescribed time period pursuant to Fed. R. Crim. P. 45(c). Any party may separately move for an order of the court lengthening or shortening the period within which a response may be filed.

(2) Reply Briefs and Sur-Replies. Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within five days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within five days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

(d) Affidavit Supporting a Motion. When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. It is strongly recommended that any attached materials should have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted or underlined material in its proper context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

Comment: In the past, the local civil rules contained the criminal case procedures governing motions. This amended rule puts the relevant procedures into a criminal rule format. This makes it easier for counsel and litigants to ascertain local criminal motion practice.

12. LOCAL RULE CR-49 Service and Filing of Papers

(a) **Generally.** All pleadings and papers submitted in criminal cases must conform to the filing, service and format requirements contained in Local Rules CV-5, CV-10 and CV-11.

(1) **Defendant Number.** In multi-defendant cases, each defendant receives a “defendant number”. The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, the parties shall identify by name and number each defendant to whom the document being filed applies.

(2) **Sealed Indictments.** In multi-defendant cases involving one or more sealed indictments, the Government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) **Filing of Sealed Documents in Criminal Cases.** Documents in criminal cases that are filed under seal pursuant to general order** or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that (1) a motion for leave to seal the document in question has been filed or (2) the court has already granted authorization to seal. For filing sealed documents in civil cases, see Local Rule CV-5(c).

(1) Counsel filing a document under seal must send a paper copy of that document to the presiding judge’s chambers. The paper copy should be sent directly to the judge’s chambers and not to the clerk’s office. Judges may opt out of this rule by entering an order.

(c) Filing of Unsealed Plea Agreements. Each unsealed plea agreement must be presented to the court in paper, not electronic, format. The clerk’s office thereupon will scan the paper plea agreement and electronically file it as a “private entry document,” which limits electronic access to the document to the attorneys in the case, the presiding judge and the court staff. However, the clerk of court shall provide public access to all unsealed plea agreements at the clerk’s offices upon request.

Comment: New section (c) adopts a procedure used in several other federal district courts. The purpose of the rule is to provide meaningful public access to unsealed plea agreements without publishing these documents, which sometimes contain sensitive information, on the Internet.

13. **LOCAL RULE CR-55 Records**

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(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.

- (3) The parties shall provide letter-sized copies of pictures of any physical or oversized exhibit prior to the conclusion of trial. The Court may order parties to provide CD-ROM disk(s) containing .pdf copies of all exhibits that were admitted by the court. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

Comment: This is the criminal case version of recommendation 10.

14. LOCAL RULE AT-2 Attorney Discipline

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(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 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.

(3) A member of this bar who has lost the right to practice law before any state or federal court, either permanently or temporarily, must advise the clerk of that fact within thirty days of the effective date of the disciplinary action. The clerk will thereafter enter a reciprocal order effective in the courts of this district.

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(d) Disciplinary Action Initiated in This Court.

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(2) Disciplinary Procedures.

(A) When it is shown to a judge of this court that an attorney has engaged in conduct which might warrant disciplinary action involving suspension or disbarment, the judge receiving the information shall bring the matter to the attention of the ~~full court~~ chief judge, who will poll the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the ~~court~~ disciplinary matter will be assigned to the chief judge, or a judge designated by the chief judge, who will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing before the chief judge, or a judge designated by the chief judge, if requested, or upon expiration of the time prescribed for a response if no response is made, the ~~court~~ chief judge, or a judge designated by the chief

judge, shall enter an appropriate order.

- (B) At any hearing before the chief judge, or a judge designated by the chief judge, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time of the hearing and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

Comment: New section (b)(3) requires attorneys who have been suspended or disbarred by another court to notify the clerk of that fact within sixty days of the effective date of the other court's disciplinary action.

The amendments to section (d) make it clear that if the judges of the court agree with the presiding judge that the subject attorney's actions may require disciplinary measures, the resultant attorney disciplinary matter will be handled by the chief judge or his or her designee.

15. APPENDIX H COURT-ANNEXED MEDIATION PLAN

I. PURPOSE

It is the purpose of this Mediation Plan to provide an alternative resolution for civil disputes. This plan is not to be considered or construed to be any abridgement of a litigant's right to a trial by jury as guaranteed by the 7th Amendment. Rather, it is designed to encourage parties to:

- (a) Confront the facts and issues in the case;
- (b) engage each other in a discussion of those issues;
- (c) analyze the risk of litigation;
- (d) consider all the costs, monetary and otherwise, involved in the dispute, and;
- (e) discuss methods of resolving the dispute.

II. MEDIATION DEFINED

Mediation is a process under which an impartial third person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

Mediation is a private process in which an impartial third party, the mediator, facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

III. QUALIFICATIONS

Any person may serve as a mediator who has completed a minimum of forty (40) classroom hours of training in dispute resolution techniques in a course conducted by an alternate dispute resolution system been ordered by the court to serve as a mediator or is approved by the parties.

Any person selected as a mediator may be disqualified by the court.

IV. ETHICS

Any person serving as mediator pursuant to this plan is subject to the Model Standards of Conduct for Mediators that were adapted by the American Bar Association in August, 2005 or similar ethical standards or guidelines. The mediator shall advise mediation participants what ethical standards he or she will follow.

V. COMPENSATION

Mediators shall be compensated at a reasonable rate. Absent agreement of the parties to the contrary, the cost for the mediator's services shall be borne equally by the parties to the mediation. The court has the right to review the reasonableness and apportionment of the mediator's compensation.

VI. MEDIATION REFERRAL

Any civil suit may be referred to mediation through the agreement of the parties and or by order of the court.

Where the court enters an order referring the parties to mediation the court shall appoint the mediator and establish a deadline for convening the mediation.

VII. SCHEDULING MEDIATION AND ATTENDANCE

A. The parties shall cooperate with the mediator in scheduling the mediation.

B. Attendance. All parties or party representatives shall be present at the mediation. Where attendance of a party is required, a party other than a person satisfies the attendance

requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. In addition, if an insurance company's approval is required by any party to settle a case, a representative of the insurance company with significant settlement authority shall attend in person.

If it appears to the mediator that a case is not being reasonably evaluated by the representative present, the mediator may meet privately with one or both sides to request the analysis that has gone into the evaluation of the case, including the names and authority of the individual involved in the analysis. The mediator may request identified individuals or designate a level of authority to be present if a subsequent mediation is scheduled.

The mediator may vary the mandates of this section, with respect to scheduling and attendance of parties or party representatives in accordance with law.

C. Rescheduling

The mediator may reschedule the mediation to any date before trial with or without the approval of the parties. Any rescheduling beyond the date of trial must be approved by the court.

VIII CONFIDENTIALITY

All proceedings of the mediation, including statements made by a party, attorney, or other participant, are privileged and confidential in all respects.

The mediation process is to remain confidential. Mediation proceedings may not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at a mediation conference unless a settlement is reached.

A mediator shall protect confidential information obtained by virtue of the mediation process and shall not disclose such information to anyone else. Notwithstanding the foregoing, a mediator may disclose information (1) that is required to be disclosed by operation of law; (2) that he or she is permitted by the parties to disclose or; (3) that is related to an ongoing or intended crime or fraud. If confidential information is disclosed, the mediator shall advise the parties that disclosure is required and will be made.

IX. MEDIATION REPORT

Within five (5) days following the conclusion of the mediation, the mediator shall electronically file the mediation report with the court using the CM/ECF filing system. The report shall indicate whether the case settled, was continued, or whether the mediator declared an impasse.

Comment: The revisions to the Plan were authored by an Ad Hoc Mediation Plan Committee appointed by the Court. The new plan is intended to streamline language and procedures so that it reflects current practice within the Eastern District. The following italicized comments from the Committee explain the reasoning behind the Plan amendments:

Mediation in the Eastern District of Texas has evolved over the years as participants and the Court have become more familiar with the process. While the details set out in the Plan may have been necessary when first adopted, twenty years of experience and a growing body

of case law no longer necessitate some of these items. This Amended Plan is concise with more clarity.

The Amended Plan dispenses with Paragraphs (B) and (C) under Definitions as they are unnecessary or covered under typical ethical guidelines. Mediation has been defined in accordance with the American Bar Association's definition in its 2005 Model Standards of Conduct For Mediators. In the Amended Plan, Section I Purpose enumerates what parties are encouraged to do during mediation, yet clearly states all litigants will maintain their 7th Amendment right to a jury trial.

The section on Qualifications has been broadened so that anyone who has been ordered by the Court to mediate or is approved by the parties may mediate. It still states the Court has the authority to disqualify without attempting to set out or limit the basis. Barring some unforeseen reason, if the parties agree on a mediator, that individual should be allowed to serve regardless of whether he's an attorney or retired judge. The current requirement of forty hours of training has been removed so the court is not burdened with keeping track of this.

Rather than attempt to establish ethical principals to be followed, as the present Plan does, it was decided to require the mediator to advise participants what standards or guidelines that would be followed. The American Bar Association recently adopted some changes in 2005 and the Texas ADR Council has a committee that is currently studying revisions to the Texas guidelines. This places the burden on the mediator to keep up with evolving ethical standards rather than the Court.

The Compensation section has been left largely intact other than removing the statement that the Court may request a mediation pro bono. Obviously, the Court may make that

request without it being in The Plan, and so it is unnecessary. Limitations on compensation are usually addressed under an appropriate ethical standard.

There is no precedent for attorneys being disqualified from acting as counsel in other cases simply because they served as a mediator, so that paragraph was struck.

The section on Mediation Referral has more clarity than the existing paragraphs and is based on the actual practice which is that either the parties agree to a mediator or the Court orders it under the Amended Plan. If the parties agree, it is not necessary for there to be any stipulations or approval by the Court. When the Court orders mediation, the Court appoints the mediator and sets a deadline. It is not necessary to designate lead counsel to coordinate as the scheduling of the mediation is the responsibility of all, though as a practical matter, the mediator often handles the scheduling.

The present Plan on Party Attendance requires party attendance and can involve obtaining written permission from the Court to excuse people from attending. It also discusses sanction motions that may be filed for not complying with attendance requirements. The Plan requires Court approval for any mediation scheduled less than ten days before trial as well as requiring the consent of the parties and their counsel. The Amended Plan does away with these burdensome requirements that in actual practice are not being followed.

Additionally, the Amended Plan allows the mediator to request specific individuals or levels of authority to appear for a subsequent mediation if it appears the case is not being reasonably evaluated. It also gives the mediator authority to reconvene the mediation up to the day of trial without seeking approval of the parties or the Court.

The Trial upon Impasse section has been removed as it states the obvious.

The Confidentiality section has remained largely intact except for two matters. First, Confidentiality is now mandated rather than aspirational. "Should" has been replaced with "shall". Second, the exception allowing a mediator to disclose information that would prove an abuse of the process has been removed as that is highly subjective and not something to be taking up the time of the Court.

The Mediator Report in the Amended Plan has done away with the necessity of the parties consenting to a continuance.

Mediation is working well without much involvement from the Court. This Amended Plan seeks to maintain that.

16. APPENDIX M LOCAL PATENT RULES

* * * * *

2-1. Governing Procedure.

(a) Initial Case Management Conference. Prior to the Initial Case Management Conference with the Court, when the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the Case Management Statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

* * * * *

3-1. Disclosure of Asserted Claims and Infringement Contentions.

GENERAL ORDER 07-9

**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 (see 28 U.S.C. §2071):¹

1. LOCAL RULE CV-3 Commencement of Action

(a) 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). There is no filing fee for § 2255 motions filed by prisoners in federal custody.

(b) Page Limitation for Case Commencement Documents Filed by Pro Se Prisoners.
Absent permission obtained from the presiding judge, all case commencement documents and motions filed by pro se prisoners are limited to twenty (20) pages, including attachments.

Comment: This provision is intended to put reasonable page limitations on case commencement documents and motions filed by pro se prisoners. Some of these documents currently exceed eighty pages.

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

2. **LOCAL RULE CV-4 Complaint, Summons and Return**

- (a) At the commencement of the action, counsel shall prepare and file the civil cover sheet, Form JS 44, along with the complaint. When filing a patent, trademark or copyright case, counsel is also responsible for ~~preparing and submitting to the clerk electronically filing an AO Form 120 or 121, “Report on the Filing or Determination of an Action Regarding a Patent or a Trademark,” or AO Form 121, “Report on the Filing or Determination of an Action Regarding a Copyright”~~ and submitting a copy of the applicable form to the United States Patent Office or United States Copyright Office.

* * * * *

- (c) Service of civil process shall not be executed by the United States marshal except for government initiated process, extraordinary writ or when ordered to do so by a judge.
- (1) The attorney (or any plaintiff if acting pro se) seeking service of civil process upon a pleading filed in this district will be responsible for designating a person over the age of 18 years who is not a party in the case to make service.
- (2) Service may be made by such designated person by personal service pursuant to Rule 4, Fed.R.Civ.P. or by mailing a copy of the pleadings and summons by registered or certified mail to the person (restricted to addressee only) with return receipt requested, in accordance with Texas law.

Comment: The section (a) amendment provides a more thorough and streamlined alternative to the existing procedure.

The section (c)(2) amendment is intended to conform the local rule to existing law.

3. **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 civil case, the initial documents, including the complaint, the civil cover sheet, the service of the summons and the notice of removal (Note: although not yet required, counsel are strongly encouraged to file case opening documents electronically and pay initial filing fees online using the court's CM/ECF system);~~

~~(B) 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;~~

~~(C) filing from pro se litigants (prisoner and non-prisoner);~~

- (~~D~~ C) consents to proceed before a magistrate judge;
- (~~E~~ D) proof of service of the initial papers in a civil case;
- (~~F~~ E) papers received from another court under Fed.R.Crim.P. 5(c), Fed.R.Crim.P. 20 and Fed.R.Crim.P. 40 ;
- (~~G~~ F) 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 (*but see* Local Rule CV-80(a));
- (~~H~~ F) ~~notice of appeal (Note: although not yet required, counsel are strongly encouraged to file notices of appeal electronically and pay appellate filing fees online using the court's CM/ECF system);~~
- (~~I~~ G) application to appear pro hac vice; and
- (~~J~~ H) any document pertaining to presentence investigation reports in criminal cases.

* * * * *

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

- (A) Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice

of Electronic Filing from the court, constitutes filing of the document for all purposes, and constitutes entry of the document on the docket kept by the clerk. Receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.

- (B) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.
- (C) Service is deemed completed at the date and time stated on the Notice of Electronic Filing from the court, except that documents filed electronically after 5 p.m. ~~local time of the recipient~~ Central Time shall be deemed served on the following day.
- (D) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

* * * * *

(7) Sealed Documents.

- (A) Unless authorized by statute or rule, a document in a civil case shall not

be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

- (B) A motion to file document(s) under seal must be filed separately from the document(s) sought to be sealed. A motion to seal that is filed as a sealed document does not need to include the certification specified in section (A) above. For additional rules regarding the filing of sealed documents in criminal cases, see Local Rule CR-49(b).
- (C) Documents requested or authorized to be filed under seal ~~or filed ex parte~~ shall be filed in electronic form. Documents requested or authorized to be filed ex parte shall be filed with the clerk in .pdf format on a CD-ROM disk. The content of the CD-ROM disk will not be uploaded to the court's CM/ECF system. The CD-ROM disk will be forwarded to the presiding judge for his or her review. Attorneys must contact the clerk's office to obtain permission to file documents under seal ~~or ex parte~~ using the court's CM/ECF system. All sealed or ex parte documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel, and may do so in electronic form, and 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 (see Local Rule CV-11), who is responsible for distributing the order to all other counsel of

record for that party.

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

Comment: The deletion of existing sections (a)(1)(A) and (a)(1)(H) makes the e-filing of civil complaints and notices of appeal by attorneys mandatory. Attorneys have been voluntarily e-filing notices of appeal and paying appellate filing fees online in Texas Eastern for about a year. Attorneys generally have reacted favorably to filing notices of appeal online, since it reduces the need to process paper and speeds the appellate case opening process. Under new procedures established by the clerk's office, attorneys now will be able to control the exact time that they electronically file civil complaints. Under these procedures, the clerk's office will assign a judge to the case after counsel opens the case and e-files the complaint.

The changes to sections (a)(3)(C) and (d) of this rule clarify how the time of filing and the time of service are calculated.

The change to section (a)(7)(C) ensures that electronic access to ex parte documents is limited to the presiding judge.

4. **LOCAL RULE CV-7 Motions Practice**

* * * * *

(k) Motions for Leave to Exceed Page Limitations. A document that exceeds a page limitation established by these rules must be accompanied by 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.

(l) 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 event code entitled “emergency motion;” and (3) the chambers of the presiding judge is notified, either by telephone, e-mail or fax, that an emergency motion has been filed.

Comment: New section (k) streamlines the procedure regarding motions for leave to file overlength documents. Under the existing procedure, the overlength document is actually filed twice: once when it accompanies the motion for leave to file, and twice when it gets “officially” filed after the motion for leave to file is granted. Under the new procedure, if the motion for leave to exceed is denied, the overlength portion of the document and attachments will not be considered by the court. This encourages counsel to be concise and to put their strongest argumentation in the front part of their motion or response.

New section (l) is designed to provide the court with additional signals when a motion involves a real emergency.

5. 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) contain 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 each included pleading, motion or other document (e.g., 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][counsel are encouraged to file pleadings, motions and other documents separately whenever possible, i.e., do not include a motion and a response, or an answer and a motion in the same document];
- (3) be signed by the attorney in charge, or with his or her permission;
- (4) when filed by paper, be plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, fastened at the top only, and punched at the top center with two holes 2 7/8 inches apart; and
- (5) be double spaced and in a font no smaller than twelve (12) point type.

* * * * *

~~(c) **Redaction of Personal Identifiers.** Whenever possible, the parties should refrain from including the following personal identifiers from all documents filed with the court:~~

~~(1) **Social Security numbers.** If an individual's Social Security number must be included in a document, only the last four digits of that number should be used.~~

~~(2) **Names of minors.** A minor should only be identified by initials, unless the minor's parent, guardian or next friend consents to the use of the minor's full name, or uses it in a document filed with the court. Where initials are used for identification, they are sufficient for all purposes for identification~~

~~(3) **Dates the birth.** If an individual's date of birth must be included in a document, only the year should be used.~~

~~(4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.~~

~~(5) **Home addresses.** If a home address must be included, only the city and state should be listed.~~

~~The purpose of this rule is to avoid publication of sensitive personal information in court documents that are available on the Internet. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk will not review each pleading for compliance with this rule.~~

Comment: The new language in section (a) is designed to exclude preexisting exhibits from the formatting requirements of this rule, e.g., double spacing of documents. The new language in section (a)(5) was added to ensure that electronically-filed documents, excluding preexisting attachments, are filed in a double-spaced format.

Former section (e) was deleted, as it substantially duplicates new Fed.R.Civ.P. 5.2.

6. LOCAL RULE CV-11 Signing of Pleadings, Motions and Other Documents

Lead Attorney.

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

* * * * *

Comment: This change is intended to simplify and clarify the existing procedure for designating a lead attorney.

7. LOCAL RULE CV-54 Judgments; Costs

* * * * *

(b) Procedure for Contested Bill of Costs. Before filing a bill of costs, a party must:

(1) submit the proposed bill of costs to opposing counsel for counsel's review in light of the applicable law; and

(2) if there are any areas of disagreement, meet and confer with opposing counsel in an effort to submit an agreed bill of costs to the Court. If the parties have a legitimate dispute on which they cannot agree, the party seeking costs must file a bill of costs indicating areas of agreement and disagreement. The bill must contain a certificate by the party

seeking costs certifying compliance with the provisions of this rule.

Comment: New section (b) provides guidance as to how to proceed when a bill of costs is contested.

8. LOCAL RULE CV-56 Summary Judgment

Summary Judgment Procedure.

* * * * *

- (c) **Ruling.** In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the “Statement of Genuine Issues” response filed in opposition to the motion, as supported by proper summary judgment evidence. The court will not scour the record in an attempt to determine whether the record contains an undesignated genuine issue of material fact for trial before entering summary judgment.

* * * * *

Comment: The amendment in section (c) provides clarifying language.

9. LOCAL RULE CV-77 District Courts and Clerks

Notice of Orders, Judgments and Other Filings. The clerk may serve and give notice of orders, judgments and other filings by electronic mail in lieu of service and notice by

conventional mail, to any person who has signed a filed pleading or document and provided an e-mail address with his/her pleadings as specified in Local Rule CV-11(c)(1)(F). Any other attorney who wishes to receive notice of judicial orders, judgments and other filings must file a notice of appearance of counsel with the court.

By providing the court with an e-mail address, the party submitting the pleadings is deemed to have consented to receive service and notice of judicial orders and judgments from the clerk by e-mail. ~~Persons~~ Lead attorneys who wish to be excluded from receiving judicial notices by e-mail may do so by filing a motion with the court. Non-lead attorneys who wish to be excluded from e-mail noticing may do so by filing a notice with the court.

- (A) Notice of judicial orders, judgments and other filings is complete when the clerk obtains electronic confirmation of the receipt of the transmission. Notice by e-mail by the clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

Comment: This amendment makes it easier for non-lead attorneys to exclude themselves from e-mail noticing, should they so desire.

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

(a) Submission 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. Additional copies of trial exhibits may be submitted in binders for the court's use.
- (3) The parties shall provide letter-sized copies of pictures of any physical or oversized exhibit prior to the conclusion of trial. The Court may order parties to provide CD-ROM disk(s) containing .pdf copies of all exhibits that were admitted by the court. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

* * * * *

Comment: This amendment gives the presiding judge the option of requiring trial counsel to provide CD-ROM disk(s) containing .pdf copies of all exhibits admitted by the court. This option saves the court the time and expense of storing and shipping voluminous trial exhibits. The U.S. Supreme Court and Fifth and Federal Circuits recently indicated that they would accept trial exhibits submitted in .pdf format on CD-ROM.

11. LOCAL RULE CR-47 Motions

~~Motion practice in criminal cases shall conform to the requirements of Local Rule CV-7.~~

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

(b) Form and Content of a Motion. All motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and be accompanied by a separate proposed order for the judge's signature. The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Dispositive motions— those which could, if granted, result in the dismissal of an indictment or counts therein or the exclusion of evidence— shall contain a statement of the issues to be decided by the Court. Responses to dispositive motions must include a response to the movant's statement of issues. All motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format. All other documents, including attachments and exhibits should be in "searchable PDF" form wherever possible.

(1) Page Limits

(A) Dispositive Motions. Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed ten pages, excluding attachments.

(B) Non-dispositive Motions. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply brief shall not exceed five pages, excluding attachments.

(2) Briefing Supporting Motions and Responses. The motion and any briefing shall

be contained in one document. The briefing shall contain a concise statement of the reasons in support of the motion and citation of authorities upon which the movant relies. Likewise, the response and any briefing shall be contained in one document. Such briefing shall contain a concise statement of the reasons in opposition to the motion and a citation of authorities upon which the party relies.

(3) Certificates of Conference. Except as specified below, all motions must be accompanied by a “certificate of conference.” It should be placed at the end of the motion following the certificate of service. The certificate must state (1) that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention and (2) whether the motion is opposed or unopposed. Certificates of conference are not required of pro se litigants (prisoner or non-prisoner) or for the following motions:

- (A) motions to dismiss;
- (B) motions *in limine*;
- (C) motions for judgment of acquittal;
- (D) motions to suppress;
- (E) motions for new trial;
- (F) any motion captioned as “joint”, “agreed ” or “unopposed.” and
- (G) any motion permitted to be filed *ex parte*.

(c) Timing of a Motion.

(1) Responses. A party opposing a motion has 12 calendar days from the date the motion was served in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision. Three days shall

be added to the prescribed time period pursuant to Fed. R. Crim. P. 45(c). Any party may separately move for an order of the court lengthening or shortening the period within which a response may be filed.

(2) Reply Briefs and Sur-Replies. Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief responding to issues raised in the response within five days from the date the response is served. A sur-reply responding to issues raised in the reply may be served and filed within five days from the date the reply is served. The court need not wait for the reply or sur-reply before ruling on the motion. Absent leave of court, no further submissions on the motion are allowed.

(d) Affidavit Supporting a Motion. When allegations of fact not appearing in the record are relied upon in support of a motion, all affidavits and other pertinent documents shall be served and filed with the motion. It is strongly recommended that any attached materials should have the cited portions highlighted or underlined in the copy provided to the court, unless the citation encompasses the entire page. The page preceding and following a highlighted or underlined page may be submitted if necessary to place the highlighted or underlined material in its proper context. Only relevant, cited-to excerpts of attached materials should be attached to the motion or the response.

Comment: In the past, the local civil rules contained the criminal case procedures governing motions. This amended rule puts the relevant procedures into a criminal rule format. This makes it easier for counsel and litigants to ascertain local criminal motion practice.

12. LOCAL RULE CR-49 Service and Filing of Papers

(a) **Generally.** All pleadings and papers submitted in criminal cases must conform to the filing, service and format requirements contained in Local Rules CV-5, CV-10 and CV-11.

(1) **Defendant Number.** In multi-defendant cases, each defendant receives a “defendant number”. The numbers are assigned in the order in which defendants are listed on the complaint or indictment. When filing documents with the court, the parties shall identify by name and number each defendant to whom the document being filed applies.

(2) **Sealed Indictments.** In multi-defendant cases involving one or more sealed indictments, the Government should, at the time the sealed indictment is filed, provide the clerk with appropriately redacted copies of the indictment for each defendant. The goal of this procedure is to protect the confidential aspect of the sealed indictment with regard to any defendants not yet arrested.

(b) **Filing of Sealed Documents in Criminal Cases.** Documents in criminal cases that are filed under seal pursuant to general order** or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that (1) a motion for leave to seal the document in question has been filed or (2) the court has already granted authorization to seal. For filing sealed documents in civil cases, see Local Rule CV-5(c).

(1) Counsel filing a document under seal must send a paper copy of that document to the presiding judge’s chambers. The paper copy should be sent directly to the judge’s chambers and not to the clerk’s office. Judges may opt out of this rule by entering an order.

(c) Filing of Unsealed Plea Agreements. Each unsealed plea agreement must be presented to the court in paper, not electronic, format. The clerk's office thereupon will scan the paper plea agreement and electronically file it as a "private entry document," which limits electronic access to the document to the attorneys in the case, the presiding judge and the court staff. However, the clerk of court shall provide public access to all unsealed plea agreements at the clerk's offices upon request.

Comment: New section (c) adopts a procedure used in several other federal district courts. The purpose of the rule is to provide meaningful public access to unsealed plea agreements without publishing these documents, which sometimes contain sensitive information, on the Internet.

13. **LOCAL RULE CR-55 Records**

* * * * *

(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.

- (3) The parties shall provide letter-sized copies of pictures of any physical or oversized exhibit prior to the conclusion of trial. The Court may order parties to provide CD-ROM disk(s) containing .pdf copies of all exhibits that were admitted by the court. Oversized exhibits will be returned at the conclusion of the trial or hearing. If parties desire the oversized exhibits to be sent to the appellate court, it will be their responsibility to send them.

Comment: This is the criminal case version of recommendation 10.

14. 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 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.

(3) A member of this bar who has lost the right to practice law before any state or federal court, either permanently or temporarily, must advise the clerk of that fact within thirty days of the effective date of the disciplinary action. The clerk will thereafter enter a reciprocal order effective in the courts of this district.

* * * * *

(d) Disciplinary Action Initiated in This Court.

* * * * *

(2) Disciplinary Procedures.

(A) When it is shown to a judge of this court that an attorney has engaged in conduct which might warrant disciplinary action involving suspension or disbarment, the judge receiving the information shall bring the matter to the attention of the ~~full court~~ chief judge, who will poll the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the ~~court~~ disciplinary matter will be assigned to the chief judge, or a judge designated by the chief judge, who will notify the lawyer of the charges and give the lawyer opportunity to show good cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing before the chief judge, or a judge designated by the chief judge, if requested, or upon expiration of the time prescribed for a response if no response is made, the ~~court~~ chief judge, or a judge designated by the chief

judge, shall enter an appropriate order.

- (B) At any hearing before the chief judge, or a judge designated by the chief judge, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time of the hearing and charges. Prosecution of the charges may be conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

Comment: New section (b)(3) requires attorneys who have been suspended or disbarred by another court to notify the clerk of that fact within sixty days of the effective date of the other court's disciplinary action.

The amendments to section (d) make it clear that if the judges of the court agree with the presiding judge that the subject attorney's actions may require disciplinary measures, the resultant attorney disciplinary matter will be handled by the chief judge or his or her designee.

15. APPENDIX H COURT-ANNEXED MEDIATION PLAN

I. PURPOSE

It is the purpose of this Mediation Plan to provide an alternative resolution for civil disputes. This plan is not to be considered or construed to be any abridgement of a litigant's right to a trial by jury as guaranteed by the 7th Amendment. Rather, it is designed to encourage parties to:

- (a) Confront the facts and issues in the case;
- (b) engage each other in a discussion of those issues;
- (c) analyze the risk of litigation;
- (d) consider all the costs, monetary and otherwise, involved in the dispute, and;
- (e) discuss methods of resolving the dispute.

II. MEDIATION DEFINED

Mediation is a process under which an impartial third person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

Mediation is a private process in which an impartial third party, the mediator, facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

III. QUALIFICATIONS

Any person may serve as a mediator who has completed a minimum of forty (40) classroom hours of training in dispute resolution techniques in a course conducted by an alternate dispute resolution system been ordered by the court to serve as a mediator or is approved by the parties.

Any person selected as a mediator may be disqualified by the court.

IV. ETHICS

Any person serving as mediator pursuant to this plan is subject to the Model Standards of Conduct for Mediators that were adapted by the American Bar Association in August, 2005 or similar ethical standards or guidelines. The mediator shall advise mediation participants what ethical standards he or she will follow.

V. COMPENSATION

Mediators shall be compensated at a reasonable rate. Absent agreement of the parties to the contrary, the cost for the mediator's services shall be borne equally by the parties to the mediation. The court has the right to review the reasonableness and apportionment of the mediator's compensation.

VI. MEDIATION REFERRAL

Any civil suit may be referred to mediation through the agreement of the parties and or by order of the court.

Where the court enters an order referring the parties to mediation the court shall appoint the mediator and establish a deadline for convening the mediation.

VII. SCHEDULING MEDIATION AND ATTENDANCE

A. The parties shall cooperate with the mediator in scheduling the mediation.

B. Attendance. All parties or party representatives shall be present at the mediation. Where attendance of a party is required, a party other than a person satisfies the attendance

requirement if it is represented by a person or persons, other than outside or local counsel, with authority to enter into stipulations, with reasonable settlement authority, and with sufficient stature in the organization to have direct access to those who make the ultimate decision about settlement. In addition, if an insurance company's approval is required by any party to settle a case, a representative of the insurance company with significant settlement authority shall attend in person.

If it appears to the mediator that a case is not being reasonably evaluated by the representative present, the mediator may meet privately with one or both sides to request the analysis that has gone into the evaluation of the case, including the names and authority of the individual involved in the analysis. The mediator may request identified individuals or designate a level of authority to be present if a subsequent mediation is scheduled.

The mediator may vary the mandates of this section, with respect to scheduling and attendance of parties or party representatives in accordance with law.

C. Rescheduling

The mediator may reschedule the mediation to any date before trial with or without the approval of the parties. Any rescheduling beyond the date of trial must be approved by the court.

VIII CONFIDENTIALITY

All proceedings of the mediation, including statements made by a party, attorney, or other participant, are privileged and confidential in all respects.

The mediation process is to remain confidential. Mediation proceedings may not be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at a mediation conference unless a settlement is reached.

A mediator shall protect confidential information obtained by virtue of the mediation process and shall not disclose such information to anyone else. Notwithstanding the foregoing, a mediator may disclose information (1) that is required to be disclosed by operation of law; (2) that he or she is permitted by the parties to disclose or; (3) that is related to an ongoing or intended crime or fraud. If confidential information is disclosed, the mediator shall advise the parties that disclosure is required and will be made.

IX. MEDIATION REPORT

Within five (5) days following the conclusion of the mediation, the mediator shall electronically file the mediation report with the court using the CM/ECF filing system. The report shall indicate whether the case settled, was continued, or whether the mediator declared an impasse.

Comment: The revisions to the Plan were authored by an Ad Hoc Mediation Plan Committee appointed by the Court. The new plan is intended to streamline language and procedures so that it reflects current practice within the Eastern District. The following italicized comments from the Committee explain the reasoning behind the Plan amendments:

Mediation in the Eastern District of Texas has evolved over the years as participants and the Court have become more familiar with the process. While the details set out in the Plan may have been necessary when first adopted, twenty years of experience and a growing body

of case law no longer necessitate some of these items. This Amended Plan is concise with more clarity.

The Amended Plan dispenses with Paragraphs (B) and (C) under Definitions as they are unnecessary or covered under typical ethical guidelines. Mediation has been defined in accordance with the American Bar Association's definition in its 2005 Model Standards of Conduct For Mediators. In the Amended Plan, Section I Purpose enumerates what parties are encouraged to do during mediation, yet clearly states all litigants will maintain their 7th Amendment right to a jury trial.

The section on Qualifications has been broadened so that anyone who has been ordered by the Court to mediate or is approved by the parties may mediate. It still states the Court has the authority to disqualify without attempting to set out or limit the basis. Barring some unforeseen reason, if the parties agree on a mediator, that individual should be allowed to serve regardless of whether he's an attorney or retired judge. The current requirement of forty hours of training has been removed so the court is not burdened with keeping track of this.

Rather than attempt to establish ethical principals to be followed, as the present Plan does, it was decided to require the mediator to advise participants what standards or guidelines that would be followed. The American Bar Association recently adopted some changes in 2005 and the Texas ADR Council has a committee that is currently studying revisions to the Texas guidelines. This places the burden on the mediator to keep up with evolving ethical standards rather than the Court.

The Compensation section has been left largely intact other than removing the statement that the Court may request a mediation pro bono. Obviously, the Court may make that

request without it being in The Plan, and so it is unnecessary. Limitations on compensation are usually addressed under an appropriate ethical standard.

There is no precedent for attorneys being disqualified from acting as counsel in other cases simply because they served as a mediator, so that paragraph was struck.

The section on Mediation Referral has more clarity than the existing paragraphs and is based on the actual practice which is that either the parties agree to a mediator or the Court orders it under the Amended Plan. If the parties agree, it is not necessary for there to be any stipulations or approval by the Court. When the Court orders mediation, the Court appoints the mediator and sets a deadline. It is not necessary to designate lead counsel to coordinate as the scheduling of the mediation is the responsibility of all, though as a practical matter, the mediator often handles the scheduling.

The present Plan on Party Attendance requires party attendance and can involve obtaining written permission from the Court to excuse people from attending. It also discusses sanction motions that may be filed for not complying with attendance requirements. The Plan requires Court approval for any mediation scheduled less than ten days before trial as well as requiring the consent of the parties and their counsel. The Amended Plan does away with these burdensome requirements that in actual practice are not being followed.

Additionally, the Amended Plan allows the mediator to request specific individuals or levels of authority to appear for a subsequent mediation if it appears the case is not being reasonably evaluated. It also gives the mediator authority to reconvene the mediation up to the day of trial without seeking approval of the parties or the Court.

The Trial upon Impasse section has been removed as it states the obvious.

The Confidentiality section has remained largely intact except for two matters. First, Confidentiality is now mandated rather than aspirational. "Should" has been replaced with "shall". Second, the exception allowing a mediator to disclose information that would prove an abuse of the process has been removed as that is highly subjective and not something to be taking up the time of the Court.

The Mediator Report in the Amended Plan has done away with the necessity of the parties consenting to a continuance.

Mediation is working well without much involvement from the Court. This Amended Plan seeks to maintain that.

16. APPENDIX M LOCAL PATENT RULES

* * * * *

2-1. Governing Procedure.

(a) Initial Case Management Conference. Prior to the Initial Case Management Conference with the Court, when the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the Case Management Statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

* * * * *

3-1. Disclosure of Asserted Claims and Infringement Contentions.

Not later than 10 days ~~after~~ before the Initial Case Management Conference with the Court , a party claiming patent infringement must serve on all parties a “Disclosure of Asserted Claims and Infringement Contentions.” Separately for each opposing party, the “Disclosure of Asserted Claims and Infringement Contentions” shall contain the following information:

* * * * *

Comments: The amendments to P.R. 2-1 and 3.1 make it clear that the "Initial Case Management Conference" with the court is the Rule 26(f) conference, and not the Rule 16 scheduling conference.

The amendment to P.R. 3-1 sets the deadline for service of infringement contentions at 10 days before the Rule 26(f) conference. The intent of the revision is to give the parties and the Court more information on the infringement claims at the scheduling conference. The change in timing is minor, and should not present a significant burden to parties in light of the usual advance notice of scheduling conferences.

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Signed this 19 day of November, 2007.

FOR THE COURT:


THAD HEARTFIELD
Chief Judge