General Order 19-14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for implementation subject to a reasonable period for public notice and comment, as determined by the Clerk.[1] See 28 U.S.C. § 2071(b).

LOCAL RULE CV-1 Scope and Purpose of Rules

(a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States, the Federal Rules of Civil Procedure, these local rules, and any orders entered by the court. 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 Circuit.

(b) **Admiralty Rules**. The Supplemental Rules for Certain Admiralty and Maritime Claims, as adopted by the Supreme Court of the United States, shall govern all admiralty and maritime actions in this court.

(c) **Patent Rules**. The "Rules of Practice for Patent Cases before the Eastern District of Texas" ~~attached as Appendix B to these rules~~ shall apply to all civil actions filed in or transferred to this court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim, or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid, or is unenforceable. Judges may opt out of this rule by entering an order.

COMMENT: This reference to Appendix B is deleted in light of the relocation of the Local Patent Rules to Section V of the Local Rules as described below.

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

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

(1) **Exemptions from Electronic Filing Requirement**. The following are exempted

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

from the requirement of electronic filing:

(A) In a criminal case, the charging documents, including the complaint, information, indictment, and any superseding indictment; affidavits in support of search and arrest warrants, pen registers, trap and trace requests, wiretaps, and other related documentation; and *ex parte* documents filed in connection with ongoing criminal investigations;

(B) Documents filed by *pro se* litigants (prisoner and non-prisoner);

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

(D) Sealed civil complaints (these documents should be filed ~~on a CD-ROM disk~~ with the clerk along with a motion to seal the case pursuant to submission instructions provided by the clerk's office). *See* Local Rule CV-5(a)(7)(A).

COMMENT: Clerk's office practices for the receipt of sealed complaints has evolved beyond the use of CD-ROM and will likely continue to change with technology. Accordingly, Local Rule CV-5(a)(1)(D) is amended to direct filers to current clerk's office submission instructions for the mechanics of submitting sealed civil complaints.

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

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

* * *

(7) **Sealed Documents.**

* * *

(D) Documents requested or authorized to be filed under seal or *ex parte* shall be filed in electronic form. Service in "electronic form" shall be of documents identical in all respects to the documents(s) filed with the court; service copies shall not include encryption, password security, or other extra steps to open or access unless the same are found in the document as filed. All sealed or *ex parte* documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel and may do so in electronic form. Counsel is also responsible for complying with Local Rule CV-5(a)(9) regarding courtesy copies of filings.

When a sealed order is entered by the court, the clerk will send ~~by conventional mail~~ a copy of the sealed order to each party's~~the~~ lead attorney ~~only for each party~~ who is responsible for distributing the order to all other counsel of record for that party. *See* Local Rule CV-11.

COMMENT: Local Rule CV-5(a)(7)(D) is modified to allow the clerk's office to serve sealed orders on lead counsel for each party via any acceptable method of service, including electronic means. The language of the rule is also simplified.

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

(d) **Service by Facsimile or Electronic Means Authorized.** Except with regard to *pro se* litigants that have not consented in writing to receiving service by electronic means, ~~P~~parties may serve copies of pleadings and other case related documents to other parties by facsimile or electronic means in lieu of service and notice by mail. Such service is deemed complete upon sending. Service after 5:00 p.m. Central Time shall be deemed served on the following day for purposes of calculating responsive deadlines.

COMMENT: This amendment to CV-5(d) is made at the suggestion of the Fifth Circuit Judicial Council to avoid potential conflicts with Fed. R. Civ. P. 5(b)(2)(E).

LOCAL RULE CV-6 Computation of Time

Deficient or Corrected Documents. When a document is corrected or re-filed by an attorney following a deficiency notice from the clerk's office (e.g., for a missing certificate of service or certificate of conference), the time for filing a response runs from ~~the filing~~service of the corrected or re-filed document, not the original document.

COMMENT: CV-6 is corrected for consistency with Fed. R. Civ. P. 5 and LR CV-7 to make clear that any responsive deadlines are counted from service, not filing.

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

(a) **Generally**. All pleadings, motions, and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and shall be accompanied by a separate proposed order in searchable and editable PDF format for the judge's signature. Each pleading, motion, or response to a motion must be filed as a separate document, except for motions for alternative relief (e.g., a motion to dismiss or, alternatively, to transfer). The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in "searchable PDF" format and shall not contain restrictions or security settings that prohibit copying, highlighting, or commenting. All other documents, including attachments and exhibits,

should be in "searchable PDF" form whenever possible.

(1) **Case Dispositive Motions**. Case dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. *See* Local Rule CV-56 (regarding attachments to motions for summary judgment and responses thereto). Any reply or sur-reply to an opposed case dispositive motion filed pursuant to Section (f) of this rule shall not exceed ten pages, excluding attachments.

Case dispositive motions shall contain a statement of the issues to be decided by the court. Responses to case dispositive motions must include a response to the movant's statement of issues.

(2) **Non-dispositive Motions**. Non-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained. Any reply or sur-reply brief to an opposed non-dispositive motion filed pursuant to Section (f) of this rule shall not exceed five pages, excluding attachments. Non-dispositive motions include, among others, motions to transfer venue, motions for partial summary judgment, and motions for new trial pursuant to Fed. R. Civ. P. 59.

(3) **Total Page Limits for Summary Judgment Motions**. If a party files more than one summary judgment motion, the following additional limitations apply:

(A) A party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(B) A nonmovant's ~~party's~~ responses to a party's summary judgment motions shall not exceed sixty pages collectively, excluding attachments;

(C) ~~A party's r~~Reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments; and

(D) A nonmovant's ~~party's~~ sur-reply briefing to a party's summary judgment motions shall not exceed twenty pages collectively, excluding attachments.

COMMENT: CV-7(a)(3)(B)-(D) are clarified to eliminate potential confusion regarding cumulative page limits when a party is responding to motions for summary judgment filed by multiple parties. This amendment makes clear that the cumulative limits on responsive briefing operate on a party-by-party basis.

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

(i) **Certificates of Conference**. Except as specified below, all motions must be accompanied by a "certificate of conference" at the end of the motion following the certificate of service. The certificate must state: (1) that counsel has complied with the meet and confer requirement in Local Rule CV-7(h); and (2) whether the motion is opposed or unopposed. Opposed motions shall include a statement in the certificate of conference, signed by the movant's attorney, that the personal conference or conferences required by this rule have been conducted or were attempted, the date and manner of such conference(s) or attempts, the names of the participants in the conference(s), an explanation of why no agreement could be reached, and a statement that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. In discovery-related motions, the certificate of conference shall be signed by the lead attorney and any local counsel. In situations involving an unreasonable failure to meet and confer, the movant shall set forth in the certificate of conference the facts believed to constitute bad faith.

Neither the "meet and confer" nor the "certificate of conference" requirements are applicable to *pro se* litigants (prisoner or non-prisoner) or to the following motions:

(1) to dismiss;

(2) for judgment on the pleadings;

(3) for summary judgment, including motions for partial summary judgment;

(4) for judgment as a matter of law;

(5) for new trial;

(6) issuance of letters rogatory;

(7) objections to report and recommendations of magistrate judges or special masters;

(8) for reconsideration;

(9) for sanctions under Fed. R. Civ. P. 11, provided the requirements of Fed. R. Civ. P. 11(c)(2) have been met;

(10) for writs of garnishment;

~~(10)~~(11) any enforcement remedy provided for by the Federal Debt Collection Procedure Act, 28 U.S.C. § 3101, *et seq.*; and

~~(11)~~(12) any motion that is joined by, agreed to, or unopposed by, all the parties.

COMMENT: CV-7(i) is amended to add motions seeking enforcement remedies provided by the Federal Debt Collection Procedure Act to the list of motions that do not require a certificate of conference. FDCA remedies are extraordinary remedies, much like preliminary injunctions, garnishment or sequestration, that by their nature make a pre-motion conference with an opposing party or counsel impractical. Nothing in this rule changes the substantive or due process rights of a party opposing such a motion.

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

(a) **Lead Attorney**.

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

(2) **Responsibility**. The lead attorney is responsible in that action for the party. That individual attorney shall attend all court proceedings or send a fully informed attorney with authority to bind the client.

(b) **Signing the Pleadings**. Every document filed must be signed by the lead attorney or by an attorney of record who has the permission of the lead attorney. Requests for postponement of the trial shall also be signed by the party making the request.

(1) **Required Information**. Under the signature, the following information shall appear:

(A) attorney's individual name;

(B) state bar number;

(C) office address, including zip code;

(D) telephone and facsimile numbers; and

(E) e-mail address.

(c) **Withdrawal of Counsel**. Attorneys may withdraw from a case only by motion and order under conditions imposed by the court. When an Assistant United States Attorney enters an appearance in a case, another Assistant United States Attorney may replace the attorney by filing a notice of substitution that identifies the attorney being replaced. Unless the presiding judge otherwise directs, the notice effects the withdrawal of the attorney being replaced. Change of counsel will not be cause for delay.

COMMENT: CV-11(c) is amended to allow the withdrawal or substitution of an Assistant United States Attorney by notice, as opposed to motion and order as required for all other withdrawals of counsel. This change is considered appropriate because of the unique difficulty

effecting such changes by motion and order and because the United States is ultimately represented by the United States Attorney, on whose behalf all Assistants appear.

LOCAL RULE CV-72 Magistrate Judges

(a) Powers and Duties of a United States Magistrate Judge in Civil Cases. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(b) Objections to Non-dispositive Matters — 28 U.S.C. § 636(b)(1)(A). An objection to a magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. A party may respond to another party's objections within fourteen days after being served with a copy; however, the court need not await the filing of a response before ruling on an objection. No further briefing is allowed absent leave of court.

(c) Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B). Objections to reports and recommendations and any response thereto shall not exceed eight pages. No further briefing is allowed absent leave of court.

(d) Assignment of Matters to Magistrate Judges. The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.

~~(e) Disposition of Civil Cases by Consent of the Parties - 28 U.S.C. § 636(c).~~

~~(1) The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.~~

~~(2) 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. § 636(c)(2).~~

COMMENT: This amendment is made at the suggestion of the Fifth Circuit Judicial Council to avoid potential duplication of 28 U.S.C. sec. 636(c)(1)-(2) which authorizes magistrate consent and contains the same notice requirements.

LOCAL RULE CV-79 Records Kept by the Clerk

(a) **Submission of Hearing/Trial Exhibits**.

(1) The parties shall not submit exhibits to the clerk's office prior to a hearing/trial

without a court order. The clerk shall return to the party any physical exhibits not complying with this rule.

(2) Exhibits shall be properly marked but not placed in binders. Multiple-paged documentary exhibits should be properly fastened. Additional copies of exhibits may be submitted in binders for the court's use.

(3) The parties shall provide letter-sized copies of any documentary, physical, or oversized exhibit to the court prior to the conclusion of a hearing/trial. At the conclusion of a hearing/trial, the parties shall provide the courtroom deputy with PDF copies of all exhibits that were admitted by the court, unless otherwise ordered. 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.

~~(b) **Disposition of Exhibits by the Clerk**. Thirty days after any direct appeal has been exhausted or the time for taking that appeal has lapsed and no further action is required by the trial court, the clerk is authorized to destroy any sealed or unsealed exhibits which have not been previously claimed by the attorney of record for the party offering the same in evidence at the hearing/trial.~~

~~(c)~~(b) **Hazardous Documents 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) documents 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 must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice," Fed. R. Civ. P. 5(d), papers or other items containing or smeared with excrement or body fluids are excepted from this rule on the ground that they constitute a health hazard 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 correctional 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.

COMMENT: This deletion to CV-79 is made at the suggestion of the Fifth Circuit Judicial Council to avoid potential inconsistency with and duplication of Fed. R. Civ. P. 79(d) and The Guide to Judiciary Policy, both of which provide terms for records disposition.

LOCAL RULE CR-47 Motions

(a) **Form and Content of a Motion**. All motions and responses to 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 cause number 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 whenever possible.

(1) **Page Limits**.

(A) **Dispositive Motions**. Dispositive motions shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, responses to such motions shall not exceed 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, responses to such motions shall not exceed 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 for judgment of acquittal;

(C) motions to suppress;

(D) motions for new trial;

(E) any motion that is joined by, agreed to, or unopposed by all the parties;

(F) any motion permitted to be filed *ex parte*;

(G) objections to report and recommendations of magistrate judges;

(H) motions for reconsideration; ~~and~~

(I) dispositive motions~~.~~; and

(J) any motion related to enforcement of a debt, including relief under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3101, *et seq.* and the All Writs Act, 28 U.S.C. § 1651.

COMMENT: Similar to CV-7(i), CR-47(a)(3) is amended to add motions related to enforcement of a debt, including relief under the Federal Debt Collection Procedure Act and All Writs Act, to the list of motions in criminal cases that do not require a certificate of conference. By their nature, motions related to the enforcement of a debt in criminal cases make a pre-motion conference with an opposing party or counsel impractical. Nothing in this rule changes the substantive or due process rights of a party opposing such a motion.

LOCAL RULE CR-49 Service and Filing

(e) Sealed Addendums to Plea Agreements. Every plea agreement in this court shall have an addendum that is sealed (see Section (c)(6) ~~4~~ above). The addendum will either state "no provisions are included in this addendum," or it will contain specific provisions dealing with possible reductions in sentence in return for the defendant's substantial assistance to the government. This will allow each plea agreement to be unsealed upon sentencing without prejudicing or endangering a cooperating defendant or the defendant's family or other informants and defendants.

COMMENT: This internal cross-reference is corrected.

LOCAL RULE AT-2 Attorney Discipline

(a) **Generally**. The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations

and responsibilities of all attorneys appearing in this court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this court should be familiar with the duties and obligations imposed upon members of this bar by the Texas Disciplinary Rules of Professional Conduct, court decisions, statutes, and the usages, customs, and practices of this bar.

(b) **Disciplinary Action Initiated in Other Courts.**

(1) Except as otherwise provided in this subsection, a member of 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. This rule shall include, but is not limited to, instances where an attorney: (A) is disbarred, (B) is suspended, (C) is removed from the roll of active attorneys, (D) resigns in lieu of discipline, (E) has his or her pro hac vice status revoked as a result of misconduct, or (F) has any other discipline affecting his or her right to practice law imposed, by agreement or otherwise, as a result of the attorney's failure to adhere to any applicable standard of professional conduct.

(2) **Procedure.**

(A) If it appears that there exists a ground for discipline set forth in paragraph (b)(1) above, the clerk shall serve a notice and order upon the attorney concerned, such order to become effective thirty days after the date of service, imposing identical discipline in this district.

(B) Within twenty-one days of service of the notice and order upon the attorney, the attorney may file a motion for modification or revocation of the order. Any such motion must set forth with specificity the facts and principles relied upon by the attorney as showing good cause why a different disposition should be ordered by this court. The motion must also identify all cases currently pending in the Eastern District of Texas where the attorney has filed an appearance. For each matter, the motion should identify the attorney's client(s). The timely filing of such a motion will stay the effectiveness of the order until further order by this court.

(C) If the attorney concerned files a motion seeking modification or revocation of the order, the matter shall be assigned to the chief judge, or a judge designated by the chief judge.

(D) Discipline shall be imposed under this section unless the attorney concerned establishes that: (i) the procedure followed in the other jurisdiction deprived the attorney of due process, (ii) the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction, (iii) the imposition of the identical discipline would result in a grave injustice, (iv) the misconduct established by the other jurisdiction warrants substantially different discipline in this court, or (v) the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court.

(E) As soon as practicable, the assigned judge shall consider the attorney's motion for modification or revocation on written submission. If good cause is not established, the judge shall enter an order directing that the clerk of the court may proceed to impose discipline set forth in the order described in paragraph AT-2(b)(2)(A) above or take other such action as justice and this rule may require. If the judge determines it is appropriate to hold a hearing, the judge may direct such a hearing pursuant to paragraph (b)(3) below. ~~When it is shown to the court that a member of its bar has lost his or her right to practice as described in subsection (1) above, the court shall issue an order directing the attorney to show cause within thirty days why the imposition of the identical discipline in this district should not be imposed, and imposing that identical discipline if no response is filed. If the attorney files a response, the court will consider the following defenses in determining whether the identical discipline is warranted in this court: that the procedure followed in the other jurisdiction deprived the attorney of due process; that the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction; that the imposition of the identical discipline would result in a grave injustice; that the misconduct established by the other jurisdiction warrants substantially different discipline in this court; that the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court. If the attorney fails to establish one or more of the defenses listed above, the court shall enter the identical discipline to the extent practicable. If the attorney establishes one or more of these defenses, the court may impose whatever discipline it deems necessary and just.~~

(3) **Hearing.** If the judge determines that a hearing is appropriate, the concerned attorney shall have the right to counsel and at least fourteen days' notice of the date of the hearing. Prosecution of the reciprocal discipline may be conducted by an attorney specially appointed by the court. Costs of the prosecuting attorney and any fees allowed by the court shall be paid from the attorney admission fund.

(4) **Duty of Attorney to Report Discipline.** 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. For purposes of this rule, "disciplinary action" includes, but is not limited to, the circumstances set forth in paragraph AT-2(b)(1) above. The clerk will thereafter proceed in accordance with this rule. Absent excusable neglect, an attorney's failure to comply with this subsection shall waive that attorney's right to contest the imposition of reciprocal discipline.

* * *

(f) **Reinstatement**. Except for suspensions as reciprocal discipline pursuant to paragraph AT-2(b), any~~Any~~ lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension, provided that the bar membership fee required by Local Rule AT-1(b)(3) has been paid. Any lawyer who was suspended as reciprocal discipline pursuant to paragraph AT-2(b) may apply, in writing, at the end of the period of suspension imposed by this court. In the application for reinstatement, the attorney shall advise the court of the status of the attorney's right to practice before the jurisdiction giving rise to reciprocal discipline in this court. The attorney shall also make a full disclosure of any disciplinary actions that may have occurred in other federal or state courts since the imposition of reciprocal discipline by this court. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

COMMENT: Since its amendment in 2017 and 2018, the court has had occasion to apply amended Local Rule AT-2(b). Based on that experience, Local Rule AT-2 is further amended to provide more procedural specificity and to more closely align its procedures with those historically provided by Rule AT-2(d) for disciplinary actions initiated in this court.

AT-2(b)(1) is amended to provide additional detail regarding the scope of the reciprocal discipline provisions. This subsection clarifies, among other things, that reciprocal discipline applies in situations where an attorney resigns his or her right to practice law before any state or federal court in lieu of discipline. AT-2(b)(2) is revised to spell out the procedure applicable to a challenge to reciprocal discipline. AT-2(b)(2)(C) provides that challenges to reciprocal discipline shall be assigned to the chief judge, or a judge designated by the chief judge. This amendment harmonizes the assignment of reciprocal discipline procedures with AT-2(d)(2)(A), which addresses assignment of disciplinary actions initiating in this court. AT-2(b)(2)(E) provides that the court may rule on the objection based on the written submissions. It also establishes that the court is not required

to hold a hearing simply because the attorney concerned requests a hearing in the objection. Rather, the court possesses discretion over whether to hold a hearing and the type of hearing. AT-2(b)(3) addresses hearings on challenges to reciprocal discipline. Consistent with the procedures already set forth in AT-2(d)(2)(B), this provision establishes that the attorney concerned has a right to counsel and provides the court the right to appoint an attorney to prosecute the reciprocal discipline. AT-2(b)(4) is amended to provide that absent excusable neglect, an attorney's failure to report the loss to practice in another jurisdiction shall waive his or her right to challenge the imposition of reciprocal discipline in this Court.

AT-2(f) is amended to address reinstatement from a reciprocal discipline suspension. The revised rule requires attorneys suspended as a result of reciprocal discipline to apply for reinstatement instead of being automatically reinstated at the conclusion of the suspension imposed by this court. The procedure allows the court to confirm the discipline giving rise to reciprocal discipline in this court has terminated prior to reinstating the attorney in this court.

LOCAL ADMIRALTY RULES (Appendix A) and LOCAL PATENT RULES (Appendix B) – Non-substantive Reorganization of Appendix A and Appendix B into new Local Rules Sections IV and V.

COMMENT: Currently, the EDTX local rules consist of Sections I-III, plus two appendices containing the Local Admiralty Rules and Local Patent Rules. For organizational consistency and to consolidate the EDTX local rules into one comprehensive rules set, the Local Admiralty Rules will be added to the rules set as new Section IV and the Local Patent Rules as new Section V. All appendices will then be eliminated, completing a multi-year effort to streamline the rules by eliminating the eighteen appendices that once accompanied the rules. The culmination of this effort should make the rules more accessible for practitioners and the court alike. This reorganization makes no substantive change and maintains the internal numbering of Admiralty and Patent Rules.

RODNEY GILSTRAP
Chief Judge