

DEC 20 2002

General Order No. 02-11

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

DAVID J. MALAND, CLERK

BY
DEPUTY

David J. Maland

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 immediate implementation.¹ These amendments shall be posted forthwith on the court's Internet website, found at www.txed.uscourts.gov.

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

* * * *

(f) **Filing Papers in Proper Division.** Parties are encouraged to file pleadings, motions and other papers in the division in which the case is pending. If pleadings, motions or other papers are filed in another division, a stamped, addressed envelope for mailing to the proper division must be included.

Comment: The current practice of allowing documents to be filed in divisions other than where the case is pending delays the docketing of the document and its receipt by the judge. The new rule encourages parties to file papers in the proper division, yet allows them to file papers in other divisions as long as a stamped, addressed envelope is provided.

2. LOCAL RULE CV-7 ~~Pleadings Allowed; Form of Motions~~ Motion Practice

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(h) **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 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

¹New language appears in underlined text; deleted language appears in ~~strikeout~~ text. For the reader's convenience, commentary that explains the reason for each amendment is included. The court wishes to thank the attorney members of its Local Rules Advisory Committee, who proposed many of the amendments adopted here.

conference are not required ~~with the following motions~~ with pro se litigants (prisoner or non-prisoner), or with the following motions:

- ~~(1)~~ motions in prisoner cases;
- ~~(2)~~ 1 to dismiss;
- ~~(3)~~ 2 for judgment on the pleadings;
- ~~(4)~~ 3 for summary judgment
- ~~(4)~~ 4 motions in limine
- ~~(5)~~ for judgment as a matter of law;
- ~~(6)~~ for new trial; and
- ~~(7)~~ for admission to practice *pro hac vice*;
- ~~(8)~~ 7 any motion captioned as “joint,” “agreed upon” or “unopposed.” ~~and~~
- ~~(9)~~ motions for judgment of acquittal in criminal cases

Comment: Pro se parties, like prisoners, have difficulty contacting attorneys and vice versa. Thus, certificates of conference should no longer be required with pro se litigants.

Regarding section (h)(5), the court also believes that motions *in limine* should be exempted. Motion for admission to practice *pro hac vice* was removed in light of item 5 below. Motion for judgment of acquittal in criminal cases was removed from the list, since the list only pertains to motions in civil cases. The list has also been reorganized in sequential order.

3. LOCAL RULE CV-10 Form of Pleadings and Motions

* * * * *

(b) Tabs and Dividers. Original papers offered for filing shall not include tabs or dividers. The copy of the original that is required to be filed for the Court's use (see FRCP 5(a)), if voluminous, should have dividers or tabs, as should all copies sent to opposing counsel.

(b c) No Covers. “Blue backs” and other covers are not to be submitted with papers.

(c d) Deficient pleadings/documents. The clerk shall monitor papers for compliance with the federal and local rules as to format and form. If the paper sought to be filed is deficient as to form, the clerk shall immediately notify counsel, who should be given a reasonable opportunity to cure the perceived defect. If the perceived defect is not cured in a timely fashion, the clerk shall refer the matter to the appropriate district or magistrate judge for a ruling as to whether the papers should be made part of the record.

~~(d) — **Corporate disclosure statement.** Any non-government corporate party to an action in this court shall file a “corporate disclosure statement” identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party’s stock. A party shall file the corporate disclosure statement with its initial pleading filed in the court, and shall supplement the statement within a reasonable time of any change in the information.~~

Comment: Regarding section (b), to facilitate the scanning of the original document by the clerk’s office after filing, the original document that is filed should not be tabbed. However, the new rule requires that where the document is voluminous, counsel should use tabs in the copy of the original that is required to be filed for the Court’s use, since tabbing assists the Court in reviewing the document. The rule also makes clear that if the Court’s copy is tabbed, all copies sent to opposing counsel should be tabbed as well.

Section (d) is deleted as duplicative of new Fed.R.Civ.P 7.1, which became effective on December 1, 2002.

4. **LOCAL RULE CV-83 Rules by District Courts; Judge’s Directives**

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

(b) Transferred or Remanded Cases. No sooner than the twentieth day following an order of the court transferring a case to another district court or remanding it to the appropriate state court, the clerk shall mail to the directed court: (1) a certified copy of the court’s order directing such action, and (2) the original of all pleadings and other papers on file in the case. If a timely motion for reconsideration of the order of transfer or remand has been filed, the clerk shall delay mailing the file until the court has ruled on the motion for reconsideration.

Comment: New section (b) adopts as a local rule the procedure currently used by the clerk’s office, which ensures that the court retains jurisdiction to rule on any motions to reconsider orders transferring or remanding cases. The proposed rule is consistent with the practice endorsed by Professors Wright & Miller and local rules by other courts, and endorses twenty days as a middle ground - other districts’ policies vary from five to 30 days. *See* Wright, Miller & Cooper, *Federal Practice & Procedure*, § 3846 at n. 4; S.D.N.Y./E.D.N.Y. Local Rule 83.1 (transfer of papers occurs on expiration of five days); D. Conn. Local Rule 18 (transfer of papers occurs on eleventh day after order of transfer or removal unless motion for reconsideration has been filed); *Semro v. Halstead Enterprises, Inc.*, 619 F.Supp. 682, 683 (D.C.Ill.1985) (endorses clerk’s general policy, not codified in local rules, to hold the file for 30 days).

5. LOCAL RULE AT-1 Admission

* * * * *

(d) An attorney who is not admitted to practice before this court may appear for or represent a party in any case in this court only ~~by permission of the judge before whom the case is pending upon an approved application to appear *pro hac vice*.~~ When an attorney who is not a member of the bar of this court appears in any case before this court, he or she shall first ~~present to the judge before whom the case is pending a motion requesting permission to appear~~ submit an application to appear *pro hac vice* to the clerk of court. The ~~movant applicant~~ must read and comply with Local Rule AT-3, the “Standards of Practice to Be Observed by Attorneys” and the local rules of this court. The motion application shall be made using the form that appears as Appendix K to the local rules, and must be signed by the movant applicant personally. Such motion application also shall be accompanied by a \$25.00 local fee. An order shall then be entered by this court granting or denying the motion. The application shall be acted upon with dispatch by the clerk on the court’s behalf. The clerk shall notify the applicant as soon as possible after the application is acted upon.

* * * * *

Comment: This amendment mirrors the procedure contained in Local Rule AT-1(b) that authorizes the clerk, who is subject to the oversight of the chief judge, to act upon regular attorney admission applications. *Pro hac vice* applicants will now submit an application form and fee rather than file a motion. *Pro hac vice* applications will be acted upon promptly by the clerk. The new application form appears as Appendix K below.

6. APPENDIX D JOINT FINAL PRE-TRIAL ORDER

* * * * *

G. LIST OF WITNESSES

(Note: Each party shall set forth a separate list of witnesses who (1) will be called ~~and to testify at trial;~~ (2) may be called to testify at trial, ~~and (3) may be presented by deposition testimony at trial.~~ Those portions of the depositions that may be offered into evidence at trial shall be listed by page and line number.

H. LIST OF EXHIBITS

(Note: Each party shall set forth a separate list of numbered exhibits, separately identifying those exhibits which the party expects to offer and those

which the party may offer if the need arises, including exhibits to be used solely for impeachment, with a description of each containing sufficient information to identify the exhibits. Those portions of the depositions that will be read at trial shall be listed by page and line number as exhibits.

* * * *

Comment: The changes to Sections G and H of the Joint Final Pretrial Order form conforms the list of witnesses and exhibits to that required by Fed.R.Civ.P. 26(a)(3), "Pretrial Disclosures," to eliminate the need for the parties to prepare substantively different witness and exhibit lists to satisfy the Rule 26(a)(3) pretrial disclosures requirement and the district's pretrial order requirement, where the court requires both disclosures. Most significantly, to conform with Rule 26(a)(3) , the requirement that the portions of the depositions that may be offered into evidence be listed by page and line number is moved from the exhibit list to the witness list.

7. Appendix K Motion Application to Appear Pro Hac Vice

**~~UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DIVISION~~**

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~~MOTION TO APPEAR PRO HAC VICE~~

~~TO THE HONORABLE JUDGE OF SAID COURT:~~

~~_____ COMES NOW _____, and makes this motion to appear pro hac vice in the above entitled/numbered cause. In support thereof, Movant would respectfully show the Court as follows:~~

- ~~1. _____ Movant's address is _____.~~
- ~~2. _____ Movant is representing _____.~~
- ~~3. _____ Movant was admitted to practice by _____ in _____.~~
- ~~4. _____ Movant is in good standing and is otherwise eligible to practice before this Court.~~
- ~~5. _____ Movant is not currently suspended or disbarred in any other Court.~~
- ~~6. _____ There are no pending grievances or other criminal matters pending against Movant.~~

~~7. Movant has been admitted to practice in the following courts~~ _____.

~~8. Movant has read and will comply with the Local Rules of the Eastern District of Texas, including Rule AT-3, the "Standards of Practice to be Observed by Attorneys."~~

~~WHEREFORE, PREMISES CONSIDERED, Movant prays that the Court grant this Motion to Appear Pro Hac Vice in this matter.~~

_____ Respectfully Submitted,

Attorney's Name

Firm Name

Address

Telephone #

Fax #

Certificate of Service

This motion was forwarded to all attorneys of record on _____.

_____ Attorney's Signature:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DIVISION
APPLICATION TO APPEAR PRO HAC VICE

1. Applicant's address: _____.

2. Applicant is representing the following party/parties
in the following case(s): _____.

3. Applicant was admitted to practice in _____ (state) on _____ (date of admission).

4. Applicant is in good standing and is otherwise eligible to practice law before this court.

5. Applicant is not currently suspended or disbarred in any other court.

6. There are no pending grievances or criminal matters pending against the applicant.

7. Applicant has been admitted to practice in the following courts:

8. Applicant has read and will comply with the Local Rules of the Eastern District of Texas, including Rule AT-3, the "Standards of Practice to be Observed by Attorneys."

9. Applicant has included the requisite \$25 fee (see Local Rule AT-1(d)).

10. Applicant understands that he/she is being admitted for the ab

Application Oath:

I, _____, do solemnly swear (or affirm) that the above information is true; that I will discharge the duties of attorney and counselor of this Court faithfully; that I will demean myself

uprightly under the law and the highest ethics of our profession; and that I will support and defend the Constitution of the United States.

Signature _____
Name (please print) _____
Firm Name: _____
Address: _____
Telephone #: _____
Fax #: _____

Applicant is hereby authorized to enter an appearance as counsel for the party/parties listed above in the case(s) listed above. This application is hereby APPROVED for the court on this _____ day of _____, 20____ (see Local Rule AT-1(d)).

DAVID J. MALAND
U.S. DISTRICT CLERK
EASTERN DISTRICT OF TEXAS

By _____
Deputy Clerk

Comment: Per item 5 above, the form *pro hac vice* motion has been replaced by a *pro hac vice* admission application. For counsel’s convenience, the application form will be posted on the court’s website, located at www.txed.uscourts.gov.

8. APPENDIX L Sample Scheduling Order

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
_____ DIVISION

PLAINTIFF §
§
Plaintiff, §
§
vs. § No. _____
§
DEFENDANT, §
§
Defendant §

SCHEDULING ORDER

In accordance with the case scheduling conference held in this action on the ____ day

of _____, 200__, the court finds that the following scheduling order should issue. It is, therefore ORDERED that the following schedule of deadlines is in effect until further order of this court:

_____ Jury Selection - _____ a.m.

_____ Final Pretrial Conference - _____ a.m.

_____ Joint Final Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict (*or Proposed Findings of Fact and Conclusions of Law in non-jury cases*), and Motions in Limine.

_____ Responses to Dispositive Motions

_____ Dispositive Motions and any other motions that may require a hearing (including *Daubert* motions). Unless leave of Court is first obtained, a party may file no more than _____ summary judgment motion(s).

_____ Discovery Deadline

_____ Defendant to Identify Trial Witnesses

_____ Plaintiff to Identify Trial Witnesses

_____ Defendant to Answer Amended Pleadings

_____ Amend Pleadings
(It is not necessary to file a motion for leave to amend before the deadline to amend pleadings. It is necessary to file a motion for leave to amend after the deadline to amend pleadings)

_____ Disclosure of Expert Testimony by Defendant
See Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b) for information required to be disclosed

_____ Disclosure of Expert Testimony by Plaintiff
See Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b) for information required to be disclosed

_____ Mediation to be Completed

_____ Privilege Logs to be Exchanged by Parties (or a letter to the court stating that there are no disputes as to claims of privileged documents)

_____ Join Additional Parties

The parties are directed to Appendix "A" of this order for additional requirements applicable to this case.

SIGNED this _____ day of _____, 200__.

UNITED STATES DISTRICT JUDGE

Comment: This provision is derived from LR 56.2 of the U.S. District Court for the Northern District of Texas. It is designed to provide the Court with a mechanism that can be used on a case-by-case basis as needed to prevent counsel from circumventing Local Rule CV-7(a)(1)'s thirty-page limitation on dispositive motions by piecemealing dispositive motions by allowing the Court to incorporate limits on dispositive motions in the scheduling order as appropriate after hearing the parties' positions at the scheduling conference.

* * * * *

Signed this 20th day of December, 2002.

FOR THE COURT:

By:


JOHN HANNAH, JR.
CHIEF JUDGE