

GENERAL ORDER 10-2

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

GENERAL ORDER AMENDING LOCAL RULES

Based on public commentary received regarding General Order 10-1 and the recommendations of the Local Rules Advisory Committee, the local rules are amended as follows¹:

1. **LOCAL RULE CV-7 Motion Practice**

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- (m) **Emergency Motions.** Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word “emergency;” (2) the motion is electronically filed using the CM/ECF drop down menu option entitled “emergency ~~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: The word “motion” was stricken because the menu option is entitled “emergency,” not “emergency motion.”

2. **LOCAL RULE CR-49 Service and Filing of Papers**

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- (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

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

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. Sealed documents in criminal cases shall be filed with the clerk's office in CD-ROM format. For filing sealed documents in civil cases, see Local Rule CV-5(c).

Comment: This change conforms the rule to existing local practice. The new language mirrors the provision contained in Local Rule CV-5(c).

3. APPENDIX B ~~(as of October 27, 2006)~~ LOCAL RULES OF COURT FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES

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RULE 4. REVIEW AND APPEAL

- (A) **Motion for Reconsideration of Non-Dispositive Matters - 28 U.S.C. Section 636(b)(1)(A).** Any party may file a motion for reconsideration by a district judge of a magistrate judge's order determining a motion or matter under Subsection 1(C) of these rules, *supra*, within ~~10~~ 14 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a district judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a motion for reconsideration, which shall specifically designate the order, or part thereof, for which reconsideration is requested, and the basis for any objection thereto. A district judge of the court shall consider the motion and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The district judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this rule.
- (B) **Review of Case-Dispositive Motions and Prisoner Litigation -28 U.S.C. Section 636(b)(1)(B).** Any party may object to a magistrate judge's proposed findings, recommendations or report under Subsections 1(d), (e), and (f) of these rules, *supra*, within

10 14 days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections, which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within 5 7 days after being served with a copy thereof. A district judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate judge, making his own determination on the basis of that record. The district judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

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- (D) **Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. Section 3402.** A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal specifying the judgment from which the appeal is taken, with the clerk within 10 14 days after entry of the judgment, and must also serve a copy of the notice upon the United States attorney, personally or by mail, and provide a copy to the magistrate judge. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals. (See Rule 58 of the Federal Rules of Criminal Procedure.)

Comment: These amendments conform Appendix B to a recent amendment to Fed. R. Civ. P. 83 that changed the time period to appeal a magistrate judge's report and recommendation from 10 to 14 days.

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The public notice and comment period for General Order 10-1 has expired, and the rule amendments contained therein remain in effect as of the date of that order. The local rule amendments contained in this order are effective as of the date of this order.

Signed this ___ day of April, 2010.

FOR THE COURT:

DAVID FOLSOM
Chief Judge