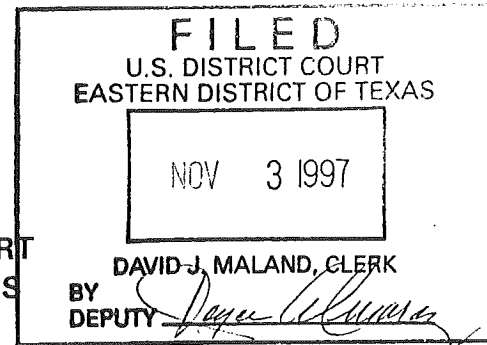


General Order No. 97-18

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



**GENERAL ORDER AMENDING AND DELETING CERTAIN LOCAL RULES**

It is hereby ORDERED that the following amendments to Local Rules CV-4(a), CV-5(d) and (e) and CR-49(e) and (f) and the deletion of Local Rule CV-68, having been approved by the judges of this court, are adopted for immediate implementation:<sup>1</sup>

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

- (a) The original and one copy of the complaint in a civil action must be filed with the Clerk, except in patent, trademark or copyright cases, where an original and two copies of the complaint must be filed. Any waiver of service of summons shall be done in accordance with Rule 4(d), Fed.R.Civ.P. If service of summons is not waived, an original and two copies of the summons in a civil action must be prepared by the attorney for the plaintiff and submitted for each defendant to be served with a copy of the complaint. Additional copies of the complaint and summons in a civil action may be required by the Clerk for service through certain governmental agencies or on certain governmental defendants. The Clerk is required to collect the filing fee authorized by federal statute before accepting a complaint for filing.

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

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<sup>1</sup>New language appears in underlined text; deleted language appears in ~~strikeout~~ text.

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

- (1) A pleading or paper may not be filed with the Clerk by direct electronic transmission (i.e., from a party's or attorney's computer to the district court's computer database) without the prior authorization of the judge or magistrate judge to whom that case is assigned. Additional guidelines regarding electronic filing in this district may be promulgated by the court from time to time.
- (2) An electronic filing is complete as of the date and time it is received by the Clerk. Service of pleadings or papers by electronic transmission on other parties or attorneys in the case, if permitted by the court, is also deemed complete as of the date and time the electronic transmission is received.

(e) Service and Notice by Facsimile or Electronic Transmission.

- (1) The Clerk may serve and give notice of judicial orders and judgments by facsimile or electronic transmission, in lieu of service and notice by mail, to any person who has a written request on file to receive service and notice of judicial orders and judgments from the Clerk by facsimile and/or electronic transmission. This request remains effective in all subsequent litigation involving the person who filed the request. However, that person may withdraw his or her request by sending written notice to the Clerk.
- (2) Service and notice of judicial orders and judgments are complete when the Clerk obtains electronic confirmation of the receipt of

the transmission. Service by electronic transmission or facsimile by the Clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

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~~LOCAL RULE CV-68 Offer of Judgment~~

~~At the Management Conference or anytime thereafter, a party may make a written offer of judgment. If the offer of judgment is not accepted and the final judgment in the case is of more benefit to the party who made the offer by 10%, then the party who rejected the offer must pay the litigation costs incurred after the offer was rejected. In personal injury and civil rights cases involving contingent attorneys' fees, the award of litigation costs shall not exceed the amount of the final judgment. The Court may, in its discretion, reduce the award of litigation costs in order to prevent undue hardship to a party.~~

~~"Litigation costs" means those costs which are directly related to preparing the case for trial and actual trial expenses, including but not limited to reasonable attorneys' fees, deposition costs and fees for expert witnesses.~~

~~The party who makes an offer of judgment shall set forth the deadline by which the offer must be accepted. The deadline must be reasonable. If the offer is not accepted in writing by the deadline, the offer is deemed rejected on that day.~~

~~The government's participation in this section is not mandatory, but is permitted with the consent of the government.<sup>2</sup>~~

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<sup>2</sup>Local Rule CV-68 has been deleted in light of the September 15, 1997 opinion of the Fifth Circuit in No. 96-40431, *Ashland Chemical, Inc. v. Barco, Inc.*, which held, *inter alia*, that the provision dealing with offers of judgment is a substantive fee-shifting provision that was not

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**LOCAL RULE CR-49 Service and Filing of Papers<sup>3</sup>**

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

- (1) A pleading or paper may not be filed with the Clerk by direct electronic transmission (i.e., from a party's or attorney's computer to the district court's computer database) without the prior authorization of the judge or magistrate judge to whom that case is assigned. Additional guidelines regarding electronic filing in this district may be promulgated by the court from time to time.
- (2) An electronic filing is complete as of the date and time it is received by the Clerk. Service of pleadings or papers by electronic transmission on other parties or attorneys in the case, if permitted by the court, is also deemed complete as of the date and time the electronic transmission is received.

(f) Service and Notice by Facsimile or Electronic Transmission.

- (1) The Clerk may serve and give notice of judicial orders and judgments by facsimile or electronic transmission, in lieu of

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authorized by Congress and is therefore unenforceable.

<sup>3</sup>New sections (e) and (f) of Local Rule CR-49 are identical to their civil rule counterparts, new sections (d) and (e) of Local Rule CV-5.

service and notice by mail, to any person who has a written request on file to receive service and notice of judicial orders and judgments from the Clerk by facsimile and/or electronic transmission. This request remains effective in all subsequent litigation involving the person who filed the request. However, that person may withdraw his or her request by sending written notice to the Clerk.

- (2) Service and notice of judicial orders and judgments are complete when the Clerk obtains electronic confirmation of the receipt of the transmission. Service by electronic transmission or facsimile by the Clerk that occurs after 5:00 p.m. on any business day is deemed effective as of the following business day.

Signed this 27<sup>th</sup> day of October, 1997.

FOR THE COURT:



RICHARD A. SCHELL  
Chief Judge