

General Order No. 98-8

JUN 3 1998

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

DAVID J. MALAND, CLERK

BY DEPUTY J. Henderson

GENERAL ORDER AMENDING AND DELETING CERTAIN LOCAL RULES

It is hereby ORDERED that the following amendments to the Local Rules for the Eastern District of Texas, having been approved by the judges of this court, are adopted for immediate implementation:<sup>1</sup>

1. **Local Rule CV-4(c)(3):**

~~(3) The attorney (or pro se plaintiff) shall file a return or affidavit with the clerk reflecting whether or not service was completed, together with a copy of the return receipt.~~

*Rationale:* The deleted provision is duplicative of Fed.R.Civ.P. 4(l).

2. **Local Rule CV-4(d):**

(d) Service through the Secretary of State for the State of Texas ~~secretary of state~~ may be accomplished in the same manner as in (c)(1) and (c)(2) above, and must be in accordance with applicable Texas statutes [note: two copies of the summons and complaint are required, as well as a fee to be paid to the Secretary of State]. ~~Counsel shall furnish the following to the secretary of state for each defendant sought to be served:~~

~~(1) The original and two (2) copies of the summons;~~

~~(2) Two (2) copies of the complaint; and~~

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

~~(3) — A check in the amount of \$50.00 (September 1, 1991) payable to the secretary of state to ensure that counsel requesting service will receive certification from the secretary of state that service has or has not been effected. Counsel shall file a copy of the proof of service by the secretary of state with the clerk of this court within 10 days from its receipt. Failure to timely file such proof of service may result in the dismissal of the case for want — of prosecution.~~

*Rationale:* The deleted text is duplicative of Section 17.044 of the Texas Civil Practice and Remedies Code, and Articles 2.11 and 8.10 of the Texas Business Corporation Act. The new language is a more concise description of the procedures required by Texas statute.

3. **Local Rule CV-5(a):**

(a) **Filing of Papers Generally.** The original and one copy of pleadings, motions and other papers shall be filed with the clerk (*but see* Local Rule CV-4(d) (two copies of summons and complaint required when serving Texas Secretary of State); Fed.R.Civ.P. 4(i) (extra copies required when serving the United States as a party); and Local Rule CV-26(a) (discovery or disclosure materials are not filed unless by order of the court)). Except where a judge has not yet been assigned to a case, pleadings, motions and other papers shall include the case caption, the last name ~~or initials~~ of the assigned district judge ~~and or~~ the appropriate magistrate judge in the event that a case has been referred to a magistrate judge for disposition.

(1) **Non-filing of Discovery Materials.** Discovery or disclosure and responses thereto shall not be filed unless by order of the court. Notices of deposition shall not be filed with the clerk, and shall not be accepted for filing by the clerk except as an attachment to an objection to the taking of the deposition and/or motion thereupon.

*Rationale: Section (a):* The additional language is intended as a helpful cross-reference that specifies three notable exceptions to the rule. “Or initials” has been struck as an unnecessary alternative.

Subsection (a)(1): The text of Local Rules CV-26(a) and CV-27 has been transferred to Local Rule CV-5(a)(1). CV-5 is a preferable numerical categorization, since Fed.R.Civ.P. 5 deals with the filing of papers (Fed.R.Civ.P. 26 pertains to discovery, and Fed.R.Civ.P. 27 deals only with depositions before action or pending appeal). The “or disclosure” language and the new last sentence have been added for clarity.

4. **Local Rule CV-5(d)(1):**

- (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 assigned to that case. ~~Additional guidelines regarding electronic filing in this district may be promulgated from the court from time to time.~~

*Rationale:* The deleted language is self-evident and unnecessary.

5. **Local Rule CV-5(e):**

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

- (1) **By the Clerk.** 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.

(A) (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.

- (2) By Counsel or Parties. Parties may serve copies of pleadings and other case-related documents to other parties by facsimile in lieu of service and notice by mail. Such service is deemed complete as of the telephonic transfer to the recipient's facsimile machine or telecopier. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

*Rationale:* The references to “electronic transmission,” or e-mail, have been deleted because it can be difficult to ensure that e-mail is actually received or opened. Thus, e-mail is not being endorsed as an alternate method of service at this time. The language in new section (e)(2) is derivative of Rule 21a of the Texas Rules of Civil Procedure. Per Local Rule CV-5(e), the court is already allowed to serve documents on the parties by facsimile. Similarly, this new provision permits counsel and pro se litigants to serve each other by facsimile.

6. **Local Rule CV-7(a):**

- (a) **Generally.** All motions, unless made during a hearing or trial, shall be in writing and conform to the requirements of Local Rules CV-5 and CV-10. Every motion shall be signed by the attorney-in-charge, or with his or her permission. See Local Rule CV-11. ~~The signature of an attorney constitutes a certificate by him that he has read the motion, that there are good grounds to support it, and that it is not interposed for delay.~~ With each motion there shall also be filed and served a proposed order for the judge's signature. The order shall be a separate paper endorsed with the style and number of the cause.

*Rationale:* The deleted language is duplicative of Fed. R.Civ. P. 11(b).

7. **Local Rule CV-7(b)(1) :**

(b) **Documents Supporting Motions.** 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.

(1) **Discovery or Disclosure Documents.** When discovery or disclosure documents or portions thereof are needed in support of a motion, those portions of the discovery or disclosure which are relevant to the motion shall be submitted with the motion and attached thereto as exhibits. See Rule CV-56.

*Rationale:* The new language clarifies that relevant disclosure material, which has usually been provided to opposing parties, as well as relevant discovery material, which may or may not have been provided to opposing parties, should be attached when needed to support a motion.

8. **Local Rule CV-10(a):**

(a) When offered for filing, all papers shall be (1) endorsed with the style and number of the action and a statement of the character of the paper (e.g., COMPLAINT, MOTION TO DISMISS) [note: see Local Rule CV-38(a) for cases involving jury demands], (2) plainly written, typed, or printed, double-spaced, on 8 1/2 inch by 11 inch white paper, stapled at the top only, and punched at the top center with two holes 2 7/8 inches apart, (3) signed by the attorney in charge and contain beneath the signature line his or her name, bar I.D. number, post office address and telephone number. "Blue backs" and other covers are not to be submitted with papers. No brief or motion shall be filed with the court with a font or typeface smaller than twelve (12) point type and 12 characters per inch. A certificate of service must be attached to and made a part of all papers when required by the Federal Rules of Civil Procedure.

*Rationale:* This additional language is intended as a helpful cross-reference to the local rule on jury demands.

9. **Local Rule CV-26 Provisions Governing Discovery; Duty of Disclosure:**

~~(a) **Non-filing of Discovery Materials.** Discover and responses thereto shall not be filed unless by order of the court.~~

*Rationale:* This rule provision has been moved to Local Rule CV-5(a)(1) (see rationale for item 3 above).

10. **Local Rule CV-27:**

~~**LOCAL RULE CV-27 Depositions Before Action or Pending Appeal**~~

~~Notices of deposition shall not be filed with the clerk, and shall not be accepted for filing by the clerk except as an attachment to an objection to the taking of the deposition and/or motion thereupon.~~

*Rationale:* This rule provision has been moved to Local Rule CV-5(a)(1) (see rationale for item 3 above).

11. **Local Rule CV-47(c):**

**Communication with Jurors**

(a) No party or attorney for a party shall converse with a member of the jury during the trial of an action.


(b) After a verdict is rendered ~~but before the jury is discharged from further duty~~, an attorney ~~may~~ must obtain leave of the judge before whom the action was tried to converse with members of the jury.

~~(c) Nothing in this rule shall be construed to limit the power of the judge before whom an action is being or has been tried to permit conversations between jurors and attorneys.~~

*Rationale:* Section (b) has been revised to require the judge's permission before an attorney can converse with members of a jury after a verdict is rendered. Section (c) has been deleted as potentially confusing and/or contradictory.

Signed this 3<sup>rd</sup> day of June, 1998.

FOR THE COURT:

  
RICHARD A. SCHELL  
Chief Judge