

**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 the Local Rules for the Eastern District of Texas, having been approved by the judges of this court, are adopted for immediate implementation:¹

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

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(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, 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. 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. LOCAL RULE CV-7 Pleadings Allowed; Form of Motions

(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. 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.

(1) **Dispositive Motions.** Dispositive motions and briefs shall not exceed thirty pages, excluding attachments, unless leave of court is first obtained. Likewise, a party

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

opposing a dispositive motion shall limit the response to the motion to thirty pages, excluding attachments, unless leave of court is first obtained. See Rule CV-56 regarding attachment to motions for summary judgment and responses thereto. Any reply brief to an opposed dispositive motion filed pursuant to section (f) of this rule shall not exceed ten pages, including authorities and attachments.

- (2) **Non-dispositive Motions.** Non-dispositive motions shall not exceed fifteen pages including authorities and attachments, unless leave of court is first obtained. Likewise, a party opposing a non-dispositive motion shall limit the response to the motion to fifteen pages, including authorities and attachments, unless leave of court is first obtained. Any reply brief to an opposed non-dispositive motion filed pursuant to section (f) of this rule shall not exceed five pages, including authorities and attachments.

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- (f) **Reply Briefs.** Unless otherwise directed by the presiding judge, a party who has filed an opposed motion may serve and file a reply brief within 5 days from the date the response is served.
- (f g) **Service.** All parties shall serve copies of their motion papers upon all other parties to the action. A certificate of service attached to the papers as provided for in Local Rule CV-10 shall indicate the time and method of service.
- (g h) **Oral Hearings.** A party may in a motion or a response specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.
- (h i) **Discovery Motions.** Any judge of this court may refuse to hear a motion relating to pre-trial discovery unless the movant advises the court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter by agreement.

(i j) **Re-urged Motions in Transferred/Removed Cases.** Any motions pending in another federal or state court made by any party will be considered moot at the time of transfer or removal unless they are re-urged in this court. See also Local Rule CV-81(d).

(j k) **Determination of Motions.** Non-dispositive motions filed by the parties shall be determined by the judicial officer as soon as practicable, and in any event within thirty days after filing of the response ~~for non-dispositive motions~~ or reply, if any. The court shall employ its best efforts to dispose of dispositive motions such as summary judgment within sixty days .

3. Local Rule CV-10 Form of Pleadings

(a) **Generally.** 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 ½ inch by 11 inch white paper, ~~stapled~~ fastened 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.

4. Local Rule CV-11 Signing of Pleadings; Motions and Other Papers

Attorney-in-charge.

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5. **Notices.** All communications about an action will be sent to the attorney-in-charge and one other attorney designated by the attorney-in-charge, who ~~is~~ are responsible for notifying associate counsel.

5. Local Rule CV-26 Provisions Governing Discovery; Duty of Disclosure

(b) **Initial Disclosure.**

(1) Each party shall, without awaiting a discovery request, provide to every other party:

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(B) a copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are likely to bear significantly on any claim or defense [Note: by written agreement of all the parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials.];

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(2) Timing of Disclosure. Unless the judicial officer directs otherwise, or the parties otherwise stipulate with the judicial officer's approval, these disclosures shall be made as follows:

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(B) by a defendant within 30 days, or within 45 days by agreement of the parties, after

- (i) serving a Rule 12(b) motion or
- (ii) serving its answer to the complaint or
- (iii) removal of the action from state court, provided that service of process has been perfected upon that defendant

6. LOCAL RULE CV-30 Depositions Upon Oral Examination

Depositions of witnesses or parties shall be taken on weekdays and may not last longer than six hours per witness, unless otherwise authorized by the court. In cases where there is a neutral

non-party witness ~~that is a neutral witness~~ or a witness ~~which~~ whom all parties must examine, the six hour time limit shall be divided equally among plaintiffs and defendants. Depositions may be taken after 5:00 p.m., on weekends, or holidays with approval of a judicial officer or by agreement of counsel. Attorneys are prohibited from instructing the deponent not to answer a question or how to answer a question, except to assert a recognized privilege. Other objections shall be made at trial.

7. LOCAL RULE CV-79 Books and Records Kept by the Clerk

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(b) **Removal of Papers, Records, etc.** The clerk shall not allow the original copy of any papers, records, proceedings, or any other paper, writing or memorandum, belonging to or related to and filed in any civil action in this court to be removed from the clerk's office without permission of the judge to whom the case is assigned. ~~The clerk may authorize an attorney of record to remove copies of all papers, records, etc., filed in a civil action, from the clerk's office for examination for a limited period upon taking the attorney's receipt.~~

8. Criminal Justice Act Plan (Appendix G to the Local Rules):

APPENDIX G

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
CRIMINAL JUSTICE ACT PLAN**

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II. STATEMENT OF POLICY

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B. Compliance.

1. The court, its clerk, the federal public defender ~~Organization Center, the Death Penalty Resource Center~~ and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

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III. DEFINITIONS

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B. “Appointed attorney” includes private attorneys and the federal public defender ~~and staff attorneys of the Federal Public Defender Organization, and the Death Penalty Resource Center and staff attorneys of that organization.~~

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V. FEDERAL PUBLIC DEFENDER ORGANIZATION

A. Establishment

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2. The Federal Public Defender Organization shall be capable of providing legal services throughout the district and shall maintain offices in Tyler, ~~and~~ Beaumont and Sherman, Texas.

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VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254.

A. Appointment of Counsel. The court shall appoint the federal public defender with his or her consent, or other attorney who qualifies for appointment pursuant to section 848(q) of title 21, United States Code to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code. ~~The Death penalty Resource Center may be appointed to assist such other counsel in providing representation; where no other counsel is available, the Death Penalty Resource Center may be appointed as counsel for the petitioner.~~

~~1. The Texas Appellate Practice and Educational Resource Center in Austin, Texas, previously designated as a community defender organization pursuant to the provisions of the CJA, is hereby recognized as the Death Penalty Resource Center for the district.~~

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II. SELECTION FOR APPOINTMENT

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B. METHOD OF SELECTION

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The Clerk of Court or Federal Public Defender shall advise the judge or magistrate as to the status of distribution of cases, where appropriate, as between the Federal Public ~~or Community~~ Defender and the panel of private attorneys. If the magistrate or district judge decides to appoint an attorney from the panel, the Clerk or Federal Public Defender shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate. Signed this 24th day of July, 1999.

FOR THE COURT:

_____/s/_____
RICHARD A. SCHELL
Chief Judge