

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

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JAN 9 1998
NANCY DOHERTY, CLERK
By Y. Kelly
Deputy

Special Order No. 2-44

1. The District Judges of this Court have considered and adopted the attached amendments to the local civil rules and the local criminal rules. These revisions amend local civil rules 7.1, 10.1, 26.2, and 56.1, and local criminal rules 47.1 and 49.3; add new local civil rules 56.2-56.7, 79.4, 79.5, and 81.1, and local criminal rules, 55.3 and 55.4; and repeal local civil rule 65.1.
2. Unless modified after receipt of public comment, these rules shall take effect on April 15, 1998 and shall apply to all proceedings in civil and criminal actions thereafter commenced and, insofar as just and practicable, all proceedings in civil and criminal actions then pending.
3. Any persons who desire to comment on any of these rules may do so by submitting written comments to:

Clerk of Court
United States District Court for the Northern District of Texas
Attention: 1998 Rules Revision Comments
1100 Commerce Street, Room 14A20
Dallas, Texas 75242-1495

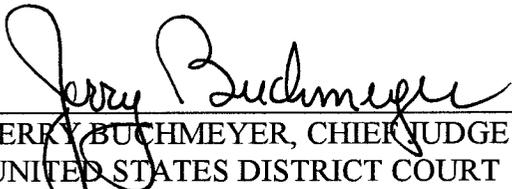
The deadline by which the Clerk must receive comments is March 16, 1998.

4. The Clerk of Court is directed to make the necessary distribution.

SO ORDERED.

January 9, 1998.

FOR THE COURT:



JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Note: Amendments to existing rules are shown by redlining new material and striking out old material. Repealed rules are stricken out in their entirety. Entirely new rules are designated “[NEW RULE]” and are set out in regular type.

LOCAL CIVIL RULES

LR 7.1 Motion Practice.

Unless otherwise directed by the presiding judge, motion practice is controlled by subsection (h) of this rule. In addition, the parties must comply with the following:

- (a) **Conference Requirement.** Before filing a motion, an attorney for the moving party must confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed. Conferences are not required for motions to dismiss, motions for judgment on the pleadings, motions for summary judgment, motions for new trial, or when a conference is not possible.
- (b) **Certificate of Conference.**
 - (1) Each motion for which a conference is required must include a certificate of conference indicating that the motion is unopposed or opposed.
 - (2) If a motion is opposed, the certificate must state that a conference was held, indicate the date of conference and the identities of the attorneys conferring, and explain why agreement could not be reached.
 - (3) If a conference was not held, the certificate must explain why it was not possible to confer, in which event the motion will be presumed to be opposed.
- (c) **Proposed Orders.** An unopposed motion must be accompanied by an agreed proposed order, signed by the attorneys or parties. An opposed motion must be accompanied by a proposed order, unless an order is not required by subsection (h) of this rule. A proposed order must be set forth on a separate document.
- (d) **Briefs.** An opposed motion must be accompanied by a brief that setting sets forth the movant’s moving party’s contentions of fact and /or law, unless a brief is not required by subsection (h) of this rule. A response to an opposed motion must be accompanied by a brief that sets forth the responding party’s contentions of fact and/or law. A responding party is not required to file a brief in opposition to a motion for which a brief is not required by subsection (h) of this rule.

- (e) **Time for Response and Brief.** Any A response and brief to a an opposed motion must be filed within 20 days from the date the motion is filed.
- (f) **Time for Reply Briefs.** Unless otherwise directed by the presiding judge, a party who files a has filed an opposed motion may file a reply brief within 15 days from the date the response is filed.
- (g) **No Oral Argument.** Unless otherwise directed by the presiding judge, oral argument on a motion will not be held.

LR 10.1 Required Form.

In addition to the requirements of the Federal Rules of Civil Procedure, each pleading, motion, or other paper must:

- (a) contain on its face a title clearly identifying each included pleading, motion, or other paper;
- (b) contain a signature block that sets forth the attorney's bar number for the jurisdiction in which the attorney is admitted to practice, and a facsimile number where information may be sent to the attorney; and
- (c) be filed on paper measuring 8½ x 11 inches;
- (d) be typed, printed, or legibly handwritten on numbered pages; and
- (e) unless otherwise provided by the local civil rules, be two-hole punched at the top and either stapled in the upper, left-hand corner or secured with a durable fastener at the top.

LR 26.2 Exchanging Exhibits, Exhibit Lists, and Witness Lists; Designating Deposition Excerpts.

- (a) **Exchanging Exhibits.** All exhibits that a party intends to offer at trial, except those offered solely for impeachment, must be marked with gummed labels or tags that identify them by the exhibit number under which they will be offered at trial, and must be exchanged with opposing parties at least 3 days before the scheduled date for trial. When practicable, a copy of such exhibits must be furnished to the presiding judge at a time and in a manner prescribed by the presiding judge.

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~~(c) Designating Depositions. Deposition Excerpts.~~

LR 56.1 Summary Judgment Motion and Response Requirements.

~~(a) Motions. Unless otherwise directed by the presiding judge, no motion for summary judgment may be filed within 45 days of trial. A motion for summary judgment must list in numerical order:~~

~~(1) the undisputed facts upon which the motion relies; and~~

~~(2) the issues of law.~~

~~(b) Response. A response to a motion for summary judgment must list in numerical order:~~

~~(1) the disputed facts upon which the response relies; and~~

~~(2) the disputed issues of law.~~

Motion Practice Not Modified Generally.

Except as expressly modified, the motion practice prescribed by LR 7.1-7.3 is not affected by LR 56.2-56.7.

LR 56.2 Limits on Time for Filing and Number of Motions. [NEW RULE]

(a) **Time for Filing.** Unless otherwise directed by the presiding judge, no motion for summary judgment may be filed within 90 days of the trial setting.

(b) **Number.** Unless otherwise directed by the presiding judge, or permitted by the Federal Rules of Civil Procedure, a party may file no more than one motion for summary judgment.

LR 56.3 Content of Motion. [NEW RULE]

- (a) Except as provided in subsection (b) of this rule, a motion for summary judgment must
- (1) on the first page, under the heading “summary,” contain a concise statement that identifies the elements of each claim or defense as to which summary judgment is sought, and
 - (2) contain the legal and/or factual grounds on which the moving party relies.
- (b) A moving party may satisfy the requirements of subsection (a) of this rule by stating in its motion that the required matters will be set forth in the party’s brief.
- (c) If a moving party seeks summary judgment on fewer than all claims or defenses, the motion must be styled as a motion for partial summary judgment.

LR 56.4 Content of Response. [NEW RULE]

- (a) Except as provided in subsection (b) of this rule, a response to a motion for summary judgment must contain the legal and/or factual grounds on which the responding party relies in opposition to the motion.
- (b) A responding party may satisfy the requirement of subsection (a) of this rule by stating in its response that the required matters will be set forth in the party’s brief.
- (c) If the responding party does not dispute that the moving party is entitled to summary judgment on one or more claims or defenses, the response must so state.

LR 56.5 Requirement of Brief; Briefing Requirements. [NEW RULE]

- (a) **Brief Required.** A summary judgment motion and a response must be accompanied by a brief that sets forth the legal and/or factual grounds on which the party relies in support of or opposition to a motion, and must contain the matters required by LR 56.3(a) or LR 56.4(a) if the party has opted to comply with those rules by including the required matters in its brief.

(b) **Length of Briefs.** The requirements of LR 7.2 apply to briefs filed pursuant to LR 56.5(a), except that, excluding the table of contents and table of authorities, the length of a principal brief must not exceed 50 pages and a reply brief must not exceed 25 pages. The presiding judge, by order or other appropriate notice issued in a civil action, may restrict the length of briefs to fewer pages than are permitted by this rule.

(c) **Citations to Appendix.** A party whose motion or response is accompanied by an appendix must include in its brief citations to each page of the appendix that supports each assertion that the party makes concerning the summary judgment evidence.

LR 56.6 Requirement of Appendix; Appendix Requirements. [NEW RULE]

(a) **Appendix Required.** A party who relies on affidavits, depositions, answers to interrogatories, or admissions on file to support or oppose a motion for summary judgment must include such evidence in an appendix.

(b) **Appendix Requirements.**

(1) The appendix must be assembled as a self-contained document, separate from the motion and brief.

(2) Each page of the appendix must measure 8½ x 11 inches. Non-documentary exhibits (*e.g.*, videotapes and other physical exhibits) and oversized exhibits (*e.g.*, maps and schematic drawings) that are included in the appendix must be placed in an envelope that measures 8½ x 11 inches.

(3) Each page of the appendix must be numbered legibly in the lower, right-hand corner. The first page must be numbered as “1,” and succeeding pages must be numbered sequentially through the last page of the entire appendix (*i.e.*, the numbering system must not re-start with each succeeding document in the appendix). An envelope that contains a non-documentary or oversized exhibit must be numbered as if it were a single page.

LR 56.7 Limit on Supplemental Materials. [NEW RULE]

Except for the motions, responses, replies, briefs, and appendixes required by these rules, a party may not, without the permission of the presiding judge, file supplemental pleadings, briefs, authorities, or evidence.

~~LR 65.1 Temporary Restraining Orders; Informal Conference.~~

~~Before the presiding judge will rule on an application for a temporary restraining order, an informal conference between the presiding judge and the attorneys will be required. To schedule an informal conference, the attorney for the applying party must:~~

~~(a) contact the presiding judge to determine the earliest possible time for setting the conference, and~~

~~(b) orally notify the adverse party of the date and time of the informal conference.~~

LR 79.4 Ex Parte and Sealed Documents. [NEW RULE]

(a) Unless exempted by subsection (b) of this rule—

(1) An *ex parte* document, or a document that a party desires be filed under seal, shall not be filed by the clerk under seal absent an order of a judge of the court directing the clerk to file the document under seal. The term “document,” as used in this rule, means any pleading, motion, other paper, or physical item that the Federal Rules of Civil Procedure permit or require to be filed.

(2) A party who desires to file a document under seal must at the time the document is presented to the clerk for filing either present a motion to file the document under seal or demonstrate that a judge has ordered that the document be filed under seal. If no judge has been assigned to a case in which a motion is filed, the clerk may direct the motion to the duty judge or to another judge of the court for consideration.

(3) The clerk of court shall defer filing an *ex parte* document, or document that a party desires be filed under seal, until a judge of the court has ruled on the motion to file the document under seal.

(b) The clerk shall file under seal any document that a statute or rule requires or permits to be so filed.

LR 79.5 Disposition of Sealed Documents. [NEW RULE]

Unless an order of the court otherwise directs, all sealed documents will be deemed unsealed 60 days after final disposition of a case. A party who desires that such a document remain sealed must move for this relief before the expiration of the 60-day period. The clerk may store, transfer, or otherwise dispose of unsealed documents according to the procedure that governs publicly available court records.

LR 81.1 Required Form of Documents to be Filed Upon Removal. [NEW RULE]

- (a) The party or parties who remove a civil action from state court must provide the following to the clerk for filing:
- (1) an original and one copy of a completed civil cover sheet;
 - (2) an original and one copy of a supplemental civil cover sheet; and
 - (3) an original and one copy of a notice of removal with a copy of each of the following attached to both the original and copy—
 - (A) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court;
 - (B) a copy of the docket sheet in the state court action; and
 - (C) each document filed in the state court action, except discovery material, individually tabbed and arranged in chronological order according to the state court file date.
- (b) The documents that subsection (a) of this rule requires to be filed must be two-hole punched at the top, and either stapled in the upper, left-hand corner or secured at the top with durable fasteners if too thick to staple. If these documents are too voluminous to be filed as a single unit, each unit must be secured in the manner required by this subsection (b) and must contain a cover sheet that identifies the case by its caption and by the civil action number assigned by the clerk.

LOCAL CRIMINAL RULES

LCrR 47.1 Motion Practice.

Unless otherwise directed by the presiding judge, motion practice is controlled by subsection (h) of this rule. In addition, the parties must comply with the following:

- (a) **Conference Requirement.** Before filing a motion, an attorney for the moving party must confer with an attorney for each party affected by the requested relief to determine whether the motion is opposed. Conferences are not required for motions to dismiss the entire action or indictment, or when a conference is not possible.
- (b) **Certificate of Conference.**
 - (1) Each motion for which a conference is required must include a certificate of conference indicating that the motion is unopposed or opposed.
 - (2) If a motion is opposed, the certificate must state that a conference was held, indicate the date of conference and the identities of the attorneys conferring, and explain why agreement could not be reached.
 - (3) If a conference was not held, the certificate must explain why it was not possible to confer, in which event the motion will be presumed to be opposed.
- (c) **Proposed Orders.** An unopposed motion must be accompanied by an agreed proposed order, signed by the attorneys or parties. An opposed motion must be accompanied by a proposed order, unless an order is not required by subsection (h) of this rule. A proposed order must be set forth on a separate document.
- (d) **Briefs.** An opposed motion must be accompanied by a brief that setting sets forth the movant's moving party's contentions of fact and /or law, unless a brief is not required by subsection (h) of this rule. A response to an opposed motion must be accompanied by a brief that sets forth the responding party's contentions of fact and/or law. A responding party is not required to file a brief in opposition to a motion for which a brief is not required by subsection (h) of this rule.
- (e) **Time for Response and Brief.** Any A response and brief to a an opposed motion must be filed within 10 days from the date the motion is filed.

(f) **Reply Briefs.** Reply briefs may not be filed unless the moving party requests, and the presiding judge grants, leave to do so. If leave is granted, the reply brief shall be filed no later than the deadline set by the presiding judge.

(g) **No Oral Argument.** Unless otherwise directed by the presiding judge, oral argument on a motion will not be held.

LCrR 49.3 Required Form.

In addition to the requirements of the Federal Rules of Criminal Procedure, each pleading, motion, or other paper must:

- (a) contain on its face a title clearly identifying each included pleading, motion, or other paper;
- (b) contain a signature block that sets forth the attorney's bar number for the jurisdiction in which the attorney is admitted to practice, and a facsimile number where information may be sent to the attorney; and
- (c) be filed on paper measuring 8½ x 11 inches;
- (d) be typed, printed, or legibly handwritten on numbered pages; and
- (e) unless otherwise provided by the local criminal rules, be two-hole punched at the top and either stapled in the upper, left-hand corner or secured with a durable fastener at the top.

LCrR 55.3 Ex Parte and Sealed Documents. [NEW RULE]

- (a) Unless exempted by subsection (b) of this rule—
 - (1) An *ex parte* document, or a document that a party desires be filed under seal, shall not be filed by the clerk under seal absent an order of a judge of the court directing the clerk to file the document under seal. The term “document,” as used in this rule, means any pleading, motion, other paper, or physical item that the Federal Rules of Criminal Procedure permit or require to be filed.

- (2) A party who desires to file a document under seal must at the time the document is presented to the clerk for filing either present a motion to file the document under seal or demonstrate that a judge has ordered that the document be filed under seal. If no judge has been assigned to a case in which a motion is filed, the clerk may direct the motion to the duty judge or to another judge of the court for consideration.
 - (3) The clerk of court shall defer filing an *ex parte* document, or document that a party desires be filed under seal, until a judge of the court has ruled on the motion to file the document under seal.
- (b) The clerk shall file under seal any document that a statute or rule requires or permits to be so filed.

LCrR 55.4 Disposition of Sealed Documents. [NEW RULE]

Unless an order of the court otherwise directs, all sealed documents will be deemed unsealed 60 days after final disposition of a case. A party who desires that such a document remain sealed must move for this relief before the expiration of the 60-day period. The clerk may store, transfer, or otherwise dispose of unsealed documents according to the procedure that governs publicly available court records.