

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS**

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for implementation and will be effective December 1, 2022, subject to a reasonable period for public notice and comment, as determined by the Clerk.¹ See 28 U.S.C. § 2071(b).

SECTION I: CIVIL RULES

LOCAL RULE CV-5 Service and Filing of Pleadings and Other Documents

(a) **Electronic Filing Required.** Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

(7) **Sealed Documents.**

(E) Except as otherwise provided by Local Rule CR-49, a party filing a document under seal must publicly file a version of that document with the confidential information redacted within twoseven days, unless the entire document is confidential information. For purposes of this rule, “confidential information” is information that the filing party contends is confidential or proprietary in a pending motion to file under seal; information that has been designated as confidential or proprietary under a protective order or non-disclosure agreement; or information otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

COMMENT: Preparation of redacted versions of sealed documents often requires discussions between the parties regarding redactions that are appropriate under the rule. Currently, the time for filing redacted versions of sealed documents is short, producing impractical deadlines when falling near weekends and holidays. Accordingly, CV-5 is amended to expand the period to 7 days, consistent with the current FRCP preference for periods in seven day increments.

¹ New language appears in underlined text, and deleted language appears in strikeout text.

LOCAL RULE CV-11 Signing of Pleadings, Motions, and Other Documents

- (c) **Withdrawal of Counsel.** Attorneys may withdraw from a case only by motion and order under conditions imposed by the court. If the client consents to a motion to withdraw or substitute counsel, the motion should so state. When an Assistant United States Attorney enters an appearance in a case, another Assistant United States Attorney may replace the attorney by filing a notice of substitution that identifies the attorney being replaced. Unless the presiding judge otherwise directs, the notice effects the withdrawal of the attorney being replaced. Change of counsel will not be cause for delay.

COMMENT: To avoid some of the ambiguity allowed by the current rule with regard to a client's position on an attorney's request to withdraw or substitute counsel, CV-11(c) is amended to include an express requirement that if a client consents to a request to withdraw or substitute counsel, the motion should state that fact. Because CV-11 is incorporated by reference in CR-49(a), this change also applies to motions to withdraw or substitute counsel in criminal cases. Notably, the amendment does not require an attorney to confer with a client and present the client's position on withdrawal or substitution in all circumstances. This omission recognizes the fact that ethical obligations may prevent an attorney from seeking a client's position on a request to withdraw or substitute in the context of certain conflicts of interest. These situations frequently arise in cases involving the representation of multiple parties and in cases of court appointed counsel where the court may not have complete information regarding conflicts the appointment may present for the attorney before the appointment is made. In those circumstances, motions are necessarily silent about a client's position because even the act of conferring may be ethically prohibited.

LOCAL RULE CV-12 Filing of Answers and Defenses

An attorney may request that the deadline be extended for a defendant to answer the complaint or file a motion under Fed. R. Civ. P. 12(b). Unless otherwise ordered by the court, where the requested extension: (1) is not opposed; and (2) ~~is not more than thirty days and~~ does not result in an overall extension of the defendant's deadline exceeding forty-five days, the request shall be by application to the clerk, not motion. The application shall be acted upon with dispatch by the clerk on the court's behalf, and the deadline to answer or otherwise respond is stayed pending action by the clerk.

COMMENT: Under the current version of CV-12, parties routinely seek up to 45 day extensions to answer by agreement using the application process described by the rule. However, the current rule requires that be done in two steps. As a result, disuniformity has developed in the clerk's office handling of such serial requests, with some divisions requiring to parties to wait an

undetermined time after filing the first application before it will approve the second application, increasing the risk for attorney errors because the second extension request is forgotten. This puts the parties and clerk's office doing something twice to accomplish what is usually a singular extension agreement between the parties. The current rule only allows parties to achieve a 45 day extension to answer in single step by motion, which then pushes these routine request to the judge's chambers, defeating the ministerial convenience sought by the rule. Accordingly, CV-12 is amended to delete the 30 day limitation on unopposed extension applications submitted to the clerk. The overall 45 day limit on such unopposed extension applications remains.


LOCAL RULE CV-26 Provisions Governing Discovery; Duty of Disclosure

- (a) **No Excuses.** ~~Except in cases involving qualified immunity or~~ ~~Absent~~ a court order to the contrary, a party is not excused from responding to discovery because there are pending motions to dismiss, to remand, or to change venue. ~~Parties asserting the defense of qualified immunity may submit a motion to limit discovery to those materials necessary to decide the issue of qualified immunity.~~

COMMENT: Local Rule CV-26(a)'s language regarding qualified immunity defenses is amended to avoid potential conflicts with evolving Fifth Circuit case law on the availability of discovery. *See Carswell v. Camp*, 37 F.4th 1062, 1066 (5th Cir. 2022).

So ORDERED and SIGNED this 7th day of November, 2022.

FOR THE COURT.



RODNEY GILSTRAP
Chief Judge