

2024 Changes to Eastern District of Louisiana Local Rules

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New Orleans' resident federal court, the Eastern District of Louisiana, made notable changes to its local rules effective January 1, 2024, which impact daily practice for most Eastern District attorneys.

Rule 7.5: Response and Memorandum

First, the amendments to Local Civil Rule 7.5 recognize a movant's right to file a reply brief and establish a deadline. Practically, this means a movant is no longer required to seek leave of court to file a reply brief into the record. Instead, after an opposing party files and serves its opposition, the movant may automatically file and serve a reply brief in support of their motion no later than 4:00 PM two working days before the noticed submission date. Previously, although most judges routinely allowed reply briefs to be filed into the record, it was in the court's discretion whether or not to allow a movant to address arguments made in an opposition, or supplement original arguments via reply brief. This amendment formally recognizes the reply brief as an instrumental litigation tool, particularly in an age where most motions are decided without oral argument and movants otherwise do not have an opportunity to respond to arguments raised via opposition.

Rule 78.1: Submission Dates and Oral Argument

Rule 78.1's amendments clarify the availability of oral argument generally, which is no longer permitted until parties are advised otherwise by the court. According to the revisions, oral argument is only permitted when specifically and affirmatively ordered by the court following the submission of a separate written request for oral argument.

Rule 78.1 also changed Wednesdays as the Eastern District's default "motion day," and now each section of court may designate its own motion submission dates. The rule concerning the request for oral argument remains unchanged; the party seeking oral argument must request the same by a separate motion filed contemporaneously with the motion or opposition motion or within three days after receipt of the opposition.

Rule 5.6: Procedure for Filing Documents Under Seal

Rule 5.6's amendments revamp the procedure for filing documents under seal and appear to be the court's response to the overzealous and seemingly default use of the previous sealing procedure. The language of the new Rule 5.6 states that motions to seal entire pleadings and briefs are disfavored and will be appropriate only in extraordinary circumstances. Further, the new rule emphasizes that "all reasonable alternatives to filing under

seal must be explored” and provides specific examples of alternatives, including line-by-line analysis of the documents for targeted redaction of only sensitive information rather than sealing entire documents.

Rule 5.6’s amendments add clear and detailed instructions for requesting information be sealed based on the individual seeking the seal. The previous version of Rule 5.6 was only a few paragraphs long, and other than requiring a motion, a non-confidential supporting memorandum with specific information, and the option to submit a confidential memorandum, the rule did not provide for different requirements based on the party seeking the sealing.

Whether the party seeking the sealing is the movant, another party, or a non-party, the new rule requires that the to-be-sealed document be filed contemporaneously with a motion to seal, and the document will be provisionally sealed pending the court’s ruling on the motion. If the sensitive information is contained in an exhibit, the party should file an otherwise blank page with the text “EXHIBIT FILED UNDER SEAL” in place of the exhibit and separately file the exhibit as an attachment to its motion to seal.

Similar to the previous rule, any motion to file information under seal must still be accompanied by a non-confidential supporting memorandum and a supporting proposed order, but the order must now recite the findings required by governing case law to support the sealing. Importantly, the rule states that marking certain information as confidential or subject to a protective order is not dispositive of whether the information will be sealed when filed with the court. The rule explicitly states that reference to a protective order is not sufficient to establish the necessity required to seal any document or portion thereof.

If the movant is the party seeking information to be filed under seal, its motion must include a non-confidential description of the portions of the document to be sealed, a statement as to why sealing is necessary, a reference to governing case law, and a statement of the time period the movant is seeking the information to remain sealed.

If another party or non-party (the rule dubs these individuals as the “Designating Part[ies]”) is seeking to have information sealed, it must file a “Motion to Consider Whether Another Party’s Material Should be Sealed” and must serve the motion the day it is filed. This motion must identify each document and/or the information the Designating Party is seeking to have sealed. Within seven days of the Designating Party filing its motion, it must file a statement setting forth the same information a movant is required to establish to file information under seal (i.e., description of the portions to be sealed, a statement as to why sealing is necessary, governing case law supporting the sealing, etc.). Failure to file this statement will result in the unsealing of any provisionally sealed information without notice to the Designating Party. Any party that wishes to file a response to the Designating Party’s motion must do so no later than 14 days after the motion is filed.

If the court grants a motion to seal, the movant (after consulting with the Designating Party, if necessary) must file a redacted version of the sealed document within 14 days of the order granting the motion. Notably, if any attorney files any document under seal, it must be served on opposing counsel by means other than the court’s CM/ECF system. The document must contain a certificate of serve reflecting how the sealed document was served. Any document or sealed information will remain sealed until the expiration of the seal or order of the court.

Rule 26.3: Initial Disclosures in Misappropriation of Trade Secret Cases

The last revision to the Local Civil Rules involves an entirely new procedure for Initial Disclosures in Trade Secrets cases. It can be found in its entirety at Local Civil Rule 26.3.

The Takeaway

The 2024 amendments to the Eastern District of Louisiana local rules introduce significant changes aimed at enhancing litigation efficiency, particularly by formalizing the reply brief process, clarifying oral argument availability, and tightening procedures for filing documents under seal. If you have any questions, please reach out to associate attorney Gillian McCarroll or any member of McGlinchey's Enterprise Litigation and Investigations group.

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