

**PUBLIC COMMENTS RECEIVED RELATED TO THE AUGUST 30, 2024 NOTICE OF A
PROPOSED ADDITION TO THE USDC, EDLA LOCAL RULES
LR 83.5.1 TRANSFER ORDERS**

If the Court has already decided it is in the interest of justice to transfer a case, why is there a need to delay?

Is the delay applicable if all parties have agreed?

Is it applicable if the Order was in response to a contested Motion and after an evidentiary hearing?

If there is a need to delay, why is it limited to transfers outside the 5th CA?

Karl W. Bengtson

The proposed addition to the local rules, LR 83.5.1, improves access to review of a transfer order by staying transfer orders for 21 days from the date the transfer order was entered on the docket if the case is to be transferred to a district outside of the Fifth Circuit. Staying “order[s] to transfer venue for a short period in the event a party wishes to challenge the transfer” deserves commendation. *See In re Clarke*, 94 F.4th 502, 507 n.1 (5th Cir. 2024) (alteration in original). The Fifth Circuit “exhort[ed] [its] district court colleagues throughout the circuit to stay venue-transfer orders for a brief time.” *In re Chamber of Com. of U.S.*, 105 F.4th 297, 302 n.17 (5th Cir. 2024); *see also id.* (“Once more, [t]his case again highlights why a district court should stay a transfer order for a short period so that opposing parties may appeal it.” (quoting *In re Fort Worth Chamber of Com.*, 100 F.4th 528, 542 (5th Cir. 2024) (Oldham, J., concurring))). Although these cases involved inter-circuit transfer orders, the interest of justice will be served by briefly staying all transfer orders to allow for review. Several other districts stay all transfer orders regardless of whether the transfer is to a district within another circuit. *See e.g.*, E.D. Tex. L.R. 83(b); E.D. Mo. L.R. 4.06; W.D. Wash. LCR 3(i). A step in the right direction, the proposed Local Rule 83.5.1 should be amended to briefly stay all (contested) transfer orders to allow for review for two reasons.

First, a brief stay of an intra-circuit transfer order will prevent sunk costs if the Fifth Circuit grants mandamus and directs the case be retransferred. If the

transfer is not stayed, the parties will need to expend resources seeking *pro hac vice* admission in the transferee court and retaining local counsel while the Fifth Circuit considers the mandamus petition. See e.g., *Attorney Appearance Pro Hac Vice*, U.S. Dist. Ct. W.D. Tex., <https://www.txwd.uscourts.gov/for-attorneys/pro-hac-vice/> (last visited Sept. 30, 2024).

Second, if the transfer order was issued by a magistrate, then a brief stay of the transfer order will facilitate the court's review of objections filed pursuant to Rule 72. See Fed. R. Civ. P. 72(a). "A judge of the court may reconsider any pretrial matter" that a judge designated the magistrate to hear. 28 U.S.C. § 636(b)(1)(A). Likewise, Rule 72(a) requires the "district judge in the case" to review timely objections. Fed. R. Civ. P. 72(a). These provisions indicate that the objections should be reviewed by the judge who referred the pretrial matter to the magistrate. See *United States v. Chitolie*, No. 1:09-cr-0026, 2010 U.S. Dist. LEXIS 56646, at *5–6 (D.V.I. June 8, 2010). By staying all contested transfer motions for 21 days, a party will have time to file objections to the transfer and if necessary, seek a stay until the district judge rules on the objections.

The potential availability of mandamus is an insufficient replacement for Rule 72 objections because a court reviewing a petition for mandamus reviews applies a higher standard of review and has discretion whether to grant the writ. Compare Fed. R. Civ. P. 72(a) with *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 308 (5th Cir. 2008) (en banc) ("[W]e hold that mandamus is appropriate when there is a clear abuse of discretion."); see *In re Volkswagen*, 545 F.3d at 310 ("[W]e only will grant mandamus relief when such errors produce a patently erroneous result."); see also *id.* at 311 ("[E]ven if [the district court abused its discretion,] the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances."). And the availability of the writ of mandamus has no effect on Rule 72(a)'s command that the district judge "consider timely objections and modify or set aside any part of the order that is clearly erroneous or contrary to law." See Fed. R. Civ. P. 72(a).

Therefore, the proposed LR 83.5.1 should be amended to read "Unless all affected parties consent to the transfer, an order that transfers a case is stayed for 21 days from the date the order is entered on the docket."

Additionally, the court should consider directing the clerk to delay the transfer of a case if a timely Rule 72(a) objection is filed or a timely motion for reconsideration is filed. See E.D. Tex. L.R. 83(b) ("If a timely motion for reconsideration of the order

of transfer or remand has been filed, the clerk shall delay mailing or transferring the file until the court has ruled on the motion for reconsideration.”). Although such a direction may be unnecessary because a party would have sufficient time to seek an order staying the transfer until resolution of the motion for reconsideration or Rule 72 objections, judicial efficiency would be served if the local rule avoided the need for issuing those stay orders.

Respectfully submitted,
John Paul Brophy