

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

NOTICE TO THE MEMBERS OF THE BAR AND THE PUBLIC

August 15, 2014

Proposed Amendments to the Local Rules of Practice
Public Comment Opportunity

The Committee on the Local Rules of Practice have proposed changes to the local rules of the court. The rules proposed to be amended are :

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| DUCiv R 5-1 | The amendment deletes a reference to the 24 hour filing box available at the Moss Building. |
| DUCiv R 37-1 | The amendment clarifies the meet and confer provisions for third parties to contest subpoenas |
| DUCiv R 45-1 | This amendment reflects the December 1, 2013 amendment to Rule 45 of the Federal Rule of Civil Procedure. |
| DUCiv R 51-1 | This rule is amended to reflect current practice for submitting jury instructions and resolving issues related to them. |
| DUCiv R 83-7.9 | This amendment changes the number of paper copies required and adds the provision that an electronic copy of briefs be submitted. |
| DUCrim R 12-1 | The subsection requiring prior notice of oral testimony is deleted to reflect current practice. |
| DUCrim R 17-2 | The amendment establishes the procedure for obtaining subpoenas pursuant to Rule 17 (c) of the Federal Rules of Criminal Procedure including giving notice to victims when required |

Any comments should be directed to: [Louise York@utd.uscourts.gov](mailto:Louise_York@utd.uscourts.gov)

Comments may also be mailed to the Court at 351 S. West Temple, Salt Lake City, Utah 84101, marked attention: Louise York. Comments should be received by September 8, 2014.

You are also encouraged to identify issues or concerns about any of the current local rules and make suggestions for amendments for the committee review.

DUCivR 5-1 FILING OF PAPERS

(a) Electronic Filing Permitted.

Papers may be filed, signed, and verified by electronic means consistent with the administrative procedures (ECF Procedures) adopted by the court to govern the court's electronic case filing system. A paper filed by electronic means in compliance with the ECF Procedures constitutes a written paper for the purpose of applying these rules.

(b) Filing of Pleadings and Papers.

Barring extraordinary circumstances, all pleadings and other case-related papers required to be filed with the court must be filed with the clerk at the office of record in Salt Lake City (i) in person during the business hours set forth in DUCivR 77-1, ~~(ii) in the twenty-four (24) hour filing box located on the south porch of the courthouse,~~ (iii) by mail, or (iv) through the court's electronic filing system. At the time of filing of a document pursuant to subparagraphs (i), **and** (ii), ~~and (iii)~~, the clerk will require:

- (1) the original of all proposed orders, certificates of service, and returns of service;
- (2) the original and **one (1)** copy of all pleadings, motions, and other papers; and,
- (3) the original and **two (2)** copies of all pleadings, motions, and other papers pertaining to a matter that has been referred to a magistrate judge.

When court is in session elsewhere in the district, pleadings, motions, proposed orders, and other pertinent papers may be filed with the clerk or with the court at the place where court is being held.

*The ECF Procedures governing electronic filing are available for review, downloading, and printing at <http://www.utd.uscourts.gov>

(c) Filing Time Requirements.

Unless otherwise directed by the court, all documents pertaining to a court proceeding must be filed with the clerk a minimum of **two (2) business days** before the scheduled proceeding.

**DUCivR 37-1 DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO
MAGISTRATE JUDGE**

(a) Informal Conference to Settle Discovery Disputes.

(1) ~~Unless otherwise ordered~~ When parties or non-parties are represented by counsel in a discovery dispute, the court will not entertain any discovery motion, ~~except those motions brought by a person appearing pro se and those brought under Fed. R. Civ. P. 26(c) by a person who is not a party,~~ unless counsel for the moving party files with the court, at the time of filing the motion, a statement showing that ~~the attorney~~ counsel making the motion has made a reasonable effort to reach agreement with opposing ~~attorneys~~ counsel on the matters set forth in the motion. Such statement must ~~recite, in addition,~~ provide the date, time, and place of such ~~consultation~~ where counsel conferred and the names of all ~~participating parties or attorneys~~ participants present at the conference.

(2) Unless otherwise ordered, pro se parties, counsel whose clients are litigating against pro se parties, and non-parties to the litigation who are not represented by counsel are not required to meet and confer about a discovery dispute prior to filing a discovery motion.

(b) Motions to Compel Discovery.

Motions to compel discovery under Fed. R. Civ. P. 37(a) must be accompanied by a copy of the discovery request, the response to the request to which objection is made, and a succinct statement, separately for each objection, summarizing why the response received was inadequate.

(c) Discovery Motions Before Magistrate Judge.

Motions to compel discovery under Fed. R. Civ. P. 37(a) may be referred to a magistrate judge for hearing or disposition. The magistrate judge has authority to enter appropriate orders granting such motions and compelling discovery. In addition, the magistrate judge may make such protective order as the court is empowered to make on any motion under Fed. R. Civ. P. 26(c). The magistrate judge, however, may not enter any order which is dispositive of a substantive issue in the case except as permitted by 28 U.S.C. § 636(b)(1)(B) and (C) or § 636(b)(3). The magistrate judge may award expenses, costs, attorneys' fees, or other sanctions under a motion under Fed. R. Civ. P. 37(a). (The provisions of 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72 cover review of magistrate judges' orders.)

DUCivR 45-1 PRIOR NOTICE OF SUBPOENA FOR NONPARTY

The notice of issuance of subpoena with a copy of the proposed subpoena that is (i) directed to a nonparty, and (ii) commands production of documents and things or inspection of premises before trial shall be served on each party as prescribed by Fed. R. Civ. P. 45(ba)(14). ~~Service under Fed. R. Civ. P. 5(b)(2)(A) shall be made at least five (5) days prior to service of the subpoena on the nonparty. Service on parties under Fed. R. Civ. P. 5(b)(2)(B), (C) or (D) shall be made at least eight (8) days prior to service of the subpoena on the non party.~~ **The subpoena may not be served upon the nonparty until four (4) days after the service of the notice.**¹

¹ ~~This provision adds a three (3) day period similar to that provided under Fed. R. Civ. P. 6(e) which extends time after service.~~ **This provision is subject to the addition of three (3) days provided by Fed. R. Civ. P(6)(d).**

DUCivR 51-1 INSTRUCTIONS TO THE JURY

~~(a) — **Proposed Jury Instructions.**~~

- ~~(1) — Submission: Unless the court otherwise orders, proposed jury instructions must be served and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive additional written requests during the course of the trial. Individual instructions must address only one (1) subject, and the principle of law embraced in any instruction may not be repeated in subsequent instructions.~~
- ~~(2) — Service: Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.~~
- ~~(3) — Format: Unless the court permits the submission of proposed jury instructions in electronic format, such instructions must be submitted in paper.
 - ~~(A) — Paper: When submitting proposed instructions on paper, counsel should provide two originals and one copy. In the first original and the copy, each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority. In the second original, each proposed instruction must be without number and citation.~~
 - ~~(B) — Electronic: When submitting proposed instructions electronically, counsel may utilize any means acceptable to the judge to whom the case is assigned. For the court's permanent file, counsel also must submit a paper original in which each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority.~~~~

~~(b) — **Ruling on Requests.**~~

~~Prior to the argument of counsel, the court, in accordance with Fed. R. Civ. P. 51, will inform counsel of the court's proposed rulings in regard to requests for instructions. If any counsel believes that there has not been sufficient information from the court under Fed. R. Civ. P. 51, counsel should call the matter specifically to the attention of the court upon the record prior to final arguments before the jury.~~

(e) — **Objections or Exceptions to Final Instructions.**

~~The jury will be instructed orally or in writing as the court may determine. As provided in Fed. R. Civ. P. 51, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by stating such to the court before the jury has retired, but out of the hearing of the jury, specifying (i) the objectionable parts of the charge or the refused instructions; and (ii) the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel at the bench are invited to indicate to the court informally any corrections or explanations of the instructions that they believe were omitted due to the inadvertence of the court.~~

In the absence of a specific Trial Order that provides instructions and deadlines regarding proposed jury instructions, all proposed jury instructions must be filed electronically in conformity with the CM/ECF Administrative Procedures and emailed to chambers in an editable format (e.g., WordPerfect or MS Word) a minimum of seven (7) days prior to the day the case is set for trial. The court, in its discretion, may receive additional written requests during the course of the trial.

Each proposed instruction must be numbered, indicate the identity of the party presenting the instruction, and contain citations to authority. Individual instructions must address only one (1) subject, and the principle of law embraced in any instruction may not be repeated in subsequent instructions.

**DUCivR 83-7.9 BANKRUPTCY - APPEALS TO THE DISTRICT COURT FROM THE
BANKRUPTCY COURT UNDER 28 U.S.C. § 158**

(a) Applicable Authority.

Appeals to the United States District Court for the District of Utah from the Bankruptcy Court under 28 U.S.C. § 158 must be taken as prescribed in Part VIII of the Fed. R. Bank. P. 8001 et seq., these Local Rules, and the following Local Rules of the U.S. Bankruptcy Appellate Panel of the Tenth Circuit (the “BAP Rules”): 8001-1, 8001-2, 8001-4, 8001-5, 8005-1, 8006-1, 8010-1(c)-(e), 8011-1, 8012-1(c), 8014-1, 8015-1, 8016-6, 8018-1, 8018-4, 8018-9, and 8018-10. The BAP Rules are available at www.bap10.uscourts.gov/rules.php When applying the BAP Rules, any reference therein to the “bankruptcy appellate panel clerk” means the clerk of this Court, and any reference to “this court” means this District Court.

(b) Transmittal Rule.

Upon issuance of the mandate in accordance with BAP Rule 8016-6, as incorporated in these rules by reference in subsection (a) above, a copy of this court’s order or judgment and a copy of any opinion will be transmitted by the clerk of the bankruptcy court.

**(c) Transmission of the Record Under Fed. R. Bank. P. 8007 and Opening of
Miscellaneous Case.**

- (1) Preliminary Transmission from Bankruptcy Court. Promptly after a notice of appeal and a statement of election are filed, the bankruptcy court clerk will transmit to the clerk a copy of the following:
 - (A) the bankruptcy court docket entries in the case and the adversary proceeding, if applicable;
 - (B) the notice of appeal and the statement of election;
 - (C) any motion to extend time to file the notice of appeal and the order disposing of the motion;
 - (D) the bankruptcy court’s judgment or order being appealed and any written findings and conclusions or opinion of the bankruptcy court; and
 - (E) any post-judgment motion regarding the appealed judgment or order and any other disposing of the motion.

- (2) Preliminary Transmission from Bankruptcy Appellate Panel. When a statement of election is filed after an appeal has been docketed by the bankruptcy appellate panel, the clerk of the bankruptcy appellate panel will transmit to the clerk a copy of the following:
 - (A) any documents transmitted by the bankruptcy court clerk to the bankruptcy appellate panel clerk, and
 - (B) the bankruptcy appellate panel docket entries and copies of any documents filed with the bankruptcy appellate panel clerk.
 - (3) Opening of a Case. Upon receipt of the preliminary transmission under subsections (1) or (2) above, the clerk must open a case, and all documents related to the appeal thereafter shall be filed in that case.
 - (4) Supplemental Transmission. After the preliminary transmission has been sent, if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk or the bankruptcy appellate panel clerk, as applicable, must transmit to the clerk a copy of the motion, any order disposing of the motion, and the related docket entries.
 - (5) Transmission of the Record. Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bank. P. 8007(b).
- (d) **Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 8009.**
- (1) Appellant's Brief. The appellant's brief must be filed within 45 days after the date of the notice that the appeal has first been docketed with the bankruptcy appellate panel or this Court, whichever date is earlier.
 - (2) Appendix. The appellant's appendix must be filed with its brief, within 45 days after the date of the notice that the appeal has first been docketed with the bankruptcy appellate panel or this Court, whichever date is earlier.
 - (A) Form. The appendix must be separate from the brief.
 - (B) Table of Contents. The appendix must be paginated and must include a table of contents.
 - (C) Order of Papers. The relevant bankruptcy court docket entries must be the first papers in the appendix. Copies of papers filed with the bankruptcy

court should be arranged in chronological order according to the filed date, with any exhibit or transcript included as of the date of the hearing.

- (D) Transcripts. The appendix must contain all transcripts, or portions of transcripts, necessary for the Court's review.
 - (E) Bankruptcy Court's File Stamp. Copies of all papers included in the appendix must show the bankruptcy court's mechanical or digital file stamp, or equivalent evidence of filing with the bankruptcy court.
 - (F) Multiple Parties. If multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously-filed appendix and may adopt the items by reference.
 - (G) Exemptions. If papers to be included in an appendix are not susceptible of copying, or are so voluminous that copying is excessively burdensome or costly, a party should file a motion to exempt the papers from the appendix and file them separately.
 - (H) Sealed Papers. Copies of papers filed under seal with the bankruptcy court should be included in an addendum to the appendix, accompanied by a motion to place the papers under seal with this Court.
- (3) Number of Copies - Courtesy Copies. Parties must file briefs and appendices electronically in accordance with these Rules. Additionally, ~~two (2)~~ **one (1)** courtesy copies of any brief and appendix must be provided to the Court upon electronic filing. The courtesy copies of the appendices must be bound or in a binder, and the contents must be tabbed consistent with the appendices and table of contents. **An electronic copy of the appendix on a CD or DVD must be included with the courtesy copy.**

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS; MOTIONS UNDER THE SPEEDY TRIAL ACT

(a) Timing.

Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than fourteen (14) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

(b) Form.

- (1) No Separate Supporting Memorandum for Written Motions. The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:
 - (A) An initial separate section stating succinctly the precise relief sought and the specific grounds for the motions; and
 - (B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.
- (2) Affidavits. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits.
- (3) Concise Motions and Memoranda. Motions and memoranda must be concise and state each basis for the motion and limited citations.
- (4) Length of Motions and Memoranda; Filing Times. There are no page limits to motions and memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within fourteen (14) days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the

memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.

- (5) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.
- (6) Unpublished Decisions. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCivR 7-2.
- (7) Exceptions to Requirement that a Motion Contain Facts and Legal Authority. Although all motions must state grounds for the request and cite applicable rules, statutes, case law, or other authority justifying the relief sought, no recitation of facts and legal authorities beyond the initial state of the precise relief sought and grounds for the motion shall be required for the following types of motions:
 - (A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
 - (B) to continue either a pretrial hearing or motion hearing; and
 - (C) for motions to suppress unless otherwise directed by the court.
- (8) Failure to Comply. Failure to comply with the requirements of this section may result in sanctions that may include returning the motions to counsel for resubmission in accordance with the rule; denial of the motions; or other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section.

(c) **Failure to Respond.**

Failure to respond timely to a motion may result in the court's granting the motion without any further notice.

(d) Oral Argument on Motions.

The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time, and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

~~(e) Notification of Oral Testimony~~

~~When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.~~

~~(f)~~ **(fe) Motion to Suppress Evidence.**

A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.

(gf) Certification by Government.

Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

~~(hg)~~ **(hg) Preparation and Entry of Order.**

When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the

court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within seven (7) days after service.

(ih) Motions Under the Speedy Trial Act (18 U.S.C. § 3161 et seq.).

All motions for extension of time or continuance under the Speedy Trial Act shall state:

- (1) the event and date that activated the time limits of the Speedy Trial Act (e.g., “defendant arrested April 1, 2011, indictment or information due within 30 days”; “defendant appeared before United States Magistrate Judge May 1, 2011, jury trial to commence within 70 days”);
- (2) the date the act is due to occur without the requested extension or continuance;
- (3) whether previous motions for extensions or continuances have been made, the disposition of the motions, and, for any motion that was granted, whether the court found the period of delay resulting from that extension or continuance to be excludable under the Speedy Trial Act;
- (4) whether the delay resulting from the requested extension or continuance is excludable under the Speedy Trial Act;
- (5) specific reasons for the requested extension or continuance, including why the act cannot be done within the originally allotted time;
 - (A) If the reason given for the extension is that other litigation presents a scheduling conflict, the motion must also:
 - (i) identify the litigation by caption, case number, and court;
 - (ii) describe the action taken in the other litigation, if any, to request a continuance or deferment;
 - (iii) state the reasons why the other litigation should receive priority;
 - (iv) state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and
 - (v) recite any other relevant circumstances.

(B) If an extension is requested due to the complexity of the case, including voluminous discovery, the motion must include specific facts demonstrating such complexity.

(C) If the motion is sought due to some type of personal hardship that counsel or the client will suffer if an extension is not granted, the motion must state the specific nature of that hardship and when the hardship might be resolved;

(6) an explanation of how the reasons offered in support of the motion justify the length of the extension or continuance that has been requested;

(7) whether opposing counsel objects to the requested extension or continuance;

(8) when the motion is made by counsel for the defendant, the motion must indicate whether the defendant agrees with the requested extension or continuance;

(9) the impact, if any, on the scheduled trial or other deadlines; and

(10) the precise relief requested by the motion.

If the motion would require divulging trial strategy or information of a highly personal nature, including medical data, the movant may seek leave to file the motion under seal. If trial strategy would be revealed, the motion and request for leave may be presented ex parte.

All such motions shall be accompanied by a proposed order for the Court's consideration. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the deadline(s) being extended and the new date(s) for the deadline(s) and shall include the findings required under the Speedy Trial Act.

See DUCrimR 49-1, Filing of Papers; DUCrimR 56-1, Office of Record; Court Library; Hours and Days of Business; and DUCrimR 57-1, General Format of Papers.

DUCrimR 17-2 MOTIONS FOR SUBPOENAS OF DOCUMENTS AND OBJECTS

- (a) All parties, regardless of whether they have retained or appointed counsel or represent themselves, must file Motions for Subpoenas pursuant to Rule 17(c) with the Court prior to issuance of any subpoena. Parties may file such motions ex parte and under seal. The docket entry will identify all such filings as SEALED EX PARTE MOTION.
- (b) The Motion should include:
 - a. The specific material sought, including an attachment of the draft subpoena;
 - b. A proffer as to the likelihood of admissibility/materiality of the material sought;
 - c. An explanation as to why the movant could not otherwise procure the material;
 - d. An explanation as to why the movant cannot prepare the matter without the material in advance; and
 - e. Either a representation that the material sought does not request personal or confidential material concerning a victim, a representation that the movant does not know if the material sought concerns request personal or confidential material concerning a victim, or a representation that the movant expressly seeks personal or confidential material concerning a victim.
- (c) If the requested subpoena seeks material about a victim or the requesting party does not know whether s/he seeks material about a victim, the court will order the Victim Coordinator from the Office of the United States Attorney seeking the contact information for the victim(s) in the case. If the subpoena does seek personal or confidential material concerning a victim, the Court will provide notice of the subpoena to the victim or his or her legal representative prior to issuance as required by Rule 17(c)(3).
- (d) “Victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.