

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

NOTICE TO THE MEMBERS OF THE BAR AND THE PUBLIC

September 16, 2011

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 :

[DUCiv R 67-1 Receipt and Deposit of Registry Funds](#)
[DUCiv R 72-2 Magistrate Judge Functions and Duties in Civil Matters](#)

[DUCrim R 12-1 Pretrial Motions: Timing, Forms, Hearings, Motions to Suppress, Certification and Orders](#)

In addition, the committee proposed enacting a new rule:

[DUCiv R 26-3 Disclosure of Testifying Expert](#)

Any comments should be directed to: Louise_York@utd.uscourts.gov

Comments may also be mailed to the Court at 350 South Main Street, Salt Lake City, Utah 84101, marked attention: Louise York

Comments received by October 7, 2011 will be reviewed by the Committee at its regular October meeting.

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS

Approved by the Rules Committee on February 8, 2011.

Published for Public Comment

Reporter's Note: This rule is amended to reflect current practice and to eliminate provisions which violate with DUCiv R 5.2-1 Privacy Protections. An individual party may move for a designated or qualified settlement funds amending provisions which only provided for a joint motion. The obligation of the clerk to invest deposited funds in interest bearing accounts is modified to begin when the funds have been cleared by the bank and are in the possession of the clerk. Finally, personal information concerning the payee will not be required in the public order for the disbursement of funds.

(a) Court Orders Pursuant to Fed. R. Civ. P. 67.

Any party seeking to make a Rule 67 deposit, with the exception of criminal cash bail, cost bonds, and civil garnishments, must make application to the court for an order to invest the funds in accordance with the following provisions of this rule.

(b) Provisions for Designated or Qualified Settlement Funds.

(1) By Motion. Where ~~the parties jointly~~ a party seeks to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the parties must identify the deposit as such in a ~~joint motion and stipulation~~ for an order to deposit funds in the court's registry. Such motion also must recommend to the court an outside fund administrator who will be responsible for (i) obtaining the fund employer identification number, (ii) filing all fiduciary tax returns, (iii) paying all applicable taxes, and (iv) otherwise coordinating with the fund depository to ensure compliance with all IRS requirements for such funds.

(2) By Settlement Agreement. Where the parties enter into a settlement agreement and jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the settlement agreement and proposed order must (i) identify the funds as such, and (ii) recommend to the court an outside fund administrator whose responsibilities are set forth in [subsection \(b\)\(1\)](#) of this rule.

(3) Order of the Court. A designated or qualified settlement fund will be established by the clerk only on order of the court on motion ~~and stipulation by all parties~~ or on acceptance by the court of the terms of the settlement agreement. The court reserves the authority to designate its own outside fund administrator.

(c) Deposit of Required Undertaking or Bond in Civil Actions.

In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the clerk of court may accept an undertaking or bond at the time the complaint is filed in an amount not less than \$300.00. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.

(d) Registry Funds Invested in Interest-Bearing Accounts.

On motion and under Fed. R. Civ. P. 67 or other authority, the court may order the clerk of court to invest certain registry funds in an interest-bearing account or instrument. Under ~~to~~ this rule, any order prepared for the court's signature and directing the investment of funds into an interest-bearing account or instrument must be limited to guaranteed federal government securities. Such orders also must specify the following:

- (1) the length of time the funds should be invested and whether, where applicable, they should be reinvested in the same account or instrument upon maturity;
- (2) where appropriate, the name(s) ~~and address(es)~~ of the designated beneficiary(ies); and
- (3) such other information appropriate under the facts and circumstances of the case and the requirements of the parties.

(e) Service Upon the Clerk.

Parties obtaining an order as described in [section \(d\)](#) of this rule must serve a copy of the order or stipulation personally upon the clerk of court or the chief deputy clerk.

(f) Deposit of Funds.

The clerk will take all reasonable steps to deposit funds that have been placed in the custody of the court into the specified accounts or instruments within ten (10) business days after having been served with a copy of the order or stipulation as provided in [section \(e\)](#) of this rule ~~and the funds have been cleared by the bank.~~

(g) Disbursements of Registry Funds.

Any party seeking a disbursement of such funds must prepare an order for the court's review and signature and must serve the signed order upon the clerk of court or chief deputy clerk. ~~The order must include the payee's full name, complete street address, and social security number or tax identification number.~~ ~~The order should specify the payee. The party who will receive the disbursement shall furnish required personal information to allow the financial administrator to issue a check and provide necessary tax documents.~~ Where applicable, such orders must indicate whether, when released by the court, the investment instruments should be redeemed promptly, subject to possible early withdrawal penalties, or held until the maturity date.

(h) Management and Handling Fees.

All funds -- including criminal bond money deposited at interest -- invested into accounts or instruments that fall under the purview of [section \(d\)](#) of this rule may be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of the miscellaneous fee schedule established by the Judicial Conference of the United States and as set forth in 28 U.S.C. § 1914, the clerk of court will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts.

(i) Verification of Deposit.

Any party that obtains an order directing, and any parties stipulating to, the investment of funds by the clerk must verify, not later than fifteen (15) days after service of the order as provided by [section \(e\)](#) of this rule, that the funds have been invested as ordered or stipulated.

(j) Liability of the Clerk.

Failure of any party to personally serve the clerk of court or chief deputy clerk with a copy of the order or stipulation as specified in [section \(e\)](#), or failure to verify investment of the funds as specified in [section \(i\)](#) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

DUCivR 72-2 MAGISTRATE JUDGE FUNCTIONS AND DUTIES IN CIVIL MATTERS

Approved by the Rules Committee on April 12, 2011

Published for Public Comment

Reporter's Note. This rule is amended to reflect current practice.

(a) General Authority.

Unless otherwise directed by the court, magistrate judges are authorized to:

- (1) grant applications to proceed without prepayment of fees;
- (2) authorize levy, entry, search, and seizure requested by authorized agents of the Internal Revenue Service under 26 U.S.C. § 331 upon a determination of probable cause;
- (3) conduct examinations of judgment debtors and other supplemental proceedings in accordance with Fed. R. Civ. P. 69;
- (4) authorize the issuance of postjudgment collection writs pursuant to the Federal Debt Collection Act;
- (5) conduct initial scheduling conferences under Fed. R. Civ. P. 16, **enter stipulated scheduling orders, and grant or deny stipulated motions to amend scheduling orders;** and
- (6) conduct all pretrial proceedings contemplated by 28 U.S.C. §636(b) and Fed. R. Civ. P. 72 in cases assigned to them under General Order ~~07-001~~.

The remainder of the current rule is unchanged.

FED. R. CRIM. P. 12 - PLEADINGS AND MOTIONS BEFORE TRIAL;
DEFENSES AND OBJECTIONS

Approved by the Rules Committee on September 13, 2011
Published for comment

Reporter's Note: The rule is enacts a new subsection (g) which incorporates requirements for entry of an order for extension of time or continuance as established by decisions of the Tenth Circuit Court of Appeals.

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.

Motions must set forth succinctly, but without argument. The specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule; denial of the motion; or, (ii) 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. 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. The court, in its discretion, may set a hearing for any such motion.

(1) Supporting Memoranda.

(A) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted

by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

- (i) 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;
- (ii) to continue either a pretrial hearing or motion hearing; and
- (iii) for motions to suppress unless otherwise directed by the court.

(B) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations.

(C) Length of Memoranda; Filing Times. There are no page limits to 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.

(D) 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.

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

(3) 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) Unpublished Decisions. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCiv R 7-2.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

DUCivR 26-3 DISCLOSURE OF TESTIFYING EXPERT

Approved by the Rules Committee on February 8, 2011

Published for Public Comment

Reporter's note: This rule provides the time period for disclosing the identity of testifying experts and their area of expertise prior to the deadline for submission of expert reports.

A party shall disclose the identity of each testifying expert by name, address, and place of employment and the general subject area of each such expert's anticipated testimony at least thirty (30) days before the deadline for submission of expert reports and disclosures under Fed.R. Civ.P. 26 (a)(2). Any expert not so identified shall not be allowed to testify at trial, absent a showing of good cause. This rule does not apply to rebuttal experts.