UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH

RULES OF PRACTICE

DECEMBER 2016

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DUCivR 1-1 AVAILABILITY AND AMENDMENTS

(a) Availability.

Copies of these rules in paper and electronic formats, as amended and with appendices, are available from the clerk's office for a reasonable charge set by the clerk. These rules also are posted on the court's website at http://www.utd.uscourts.gov. On admission to the bar of this court, each attorney will be provided a copy of these rules. Attorneys admitted Pro Hac Vice will be provided a copy on request and on payment to the clerk of the fee.

(b) Amendments to the Rules.

When amendments to these rules are proposed, notice and opportunity for public comment will be provided as directed by the court. When amendments to these rules are approved by the court, notice will be provided.

DUCivR 1-2 SANCTIONS FOR CIVIL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these civil rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party. Barring extraordinary circumstances, cases will not be dismissed for violation of the local rules.

See DUCivR 41-1 for sanctions for failure to notify the court when settlement is reached before a scheduled jury trial.

DUCivR 3-1 CLERK'S SCHEDULE OF MISCELLANEOUS FEES

Under authority of 28 U.S.C. § 1914(a) and (b), the clerk of court will collect from the parties filing and other fees as prescribed by the Judicial Conference of the United States. A current schedule of those fees is posted in the public reception area of the clerk's office, and copies of the fee schedule are available from the clerk on request. Pursuant to 28 U.S.C. § 1914(c), the court authorizes the clerk of court to require advance payment of those fees.

DUCivR 3-2 ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES

(a) Non-incarcerated Parties.

(1) Completion of Form AO 240. A non-incarcerated party wishing to proceed without having to pay the required fees under 28 U.S.C. § 1915 must complete and sign, under penalty of perjury, an Application to Proceed Without Prepayment of Fees and Affidavit (Application). The Application, Form AO240, will be supplied without charge by the clerk of court upon request or on the court's website http://www.utd.uscourts.gov.

(2) Conditions for Filing. The clerk of court will not accept any action for filing with the court that is not accompanied by the payment of fees and security or accompanied by an Application which has been granted by the court. Where an action and an Application are submitted jointly to the clerk, the clerk will lodge the action until the court has reviewed the Application. If the Application is approved, the clerk will file the action as of the date of the order. If the Application is denied, the clerk will notify the party that the action will not be filed until full payment is made.

(b) Incarcerated Parties.

(1) Completion of Form AO 240. Any incarcerated person seeking to file a civil action and to proceed without prepayment of fees must submit an Application to Proceed Without Prepayment of Fees and Affidavit, copies of which are available from the clerk of court, accompanied by a certified statement of the applicant's prison trust account showing current account status and any account activity for the six-month period preceding the date of the Application. If the Application is granted, the court will order, under the Prison Litigation Reform Act of 1995, an initial partial filing fee of twenty (20) percent of the greater of (i) the average monthly deposits to the account during the six-month period preceding the filing of the action, or (ii) the average monthly balance in the account for the six-month period preceding the filing of the action. In each following month, prison officials will calculate twenty (20) percent of the preceding month's income credited to the prisoner's account and, each time the amount in the account

exceeds ten (10) dollars, forward a check for that amount to the clerk of court. The inmate shall submit a written consent to the collection of fees by the prison officials to the court within the time specified by the order approving the Application.

(2) Conditions for Filing. The clerk will lodge complaints and petitions from incarcerated parties accompanied by an Application until certification of account balances, if not attached to the Application, and other required documents are received. Once all required documents are received, the clerk will forward the Application to a magistrate judge for review. If the Application is approved and the fee payment schedule established, the clerk will file the action as of the day of the order. If the Application is denied, the clerk will inform the prisoner of the decision of the court.

(c) Dismissal of Claims as Frivolous under 28 U.S.C §1915.

On receipt of an Application by a non-incarcerated or incarcerated party, a magistrate judge may review the complaint and recommend that (i) the Application be granted to permit the filing of the action, or (ii) that the action be dismissed pursuant to 28 U.S.C. § 1915(e)(2). If the court accepts the recommendation, the matter will be filed or subsequently closed.

DUCivR 3-3 COMMENCEMENT OF AN ACTION: NOTIFICATION OF MULTI-DISTRICT LITIGATION

An attorney filing a complaint, answer, or other pleading in a case that may be subject to pretrial proceedings before the Judicial Panel on Multidistrict Litigation, under the provisions of 28 U.S.C. § 1407, must submit in writing at the time of filing, or when the filing attorney becomes aware that the matter may be so subject, a description of the nature of the case and the titles and case numbers of all other related cases filed in this or any other jurisdiction.

DUCivR 3-4 CIVIL COVER SHEET

Every complaint or other document initiating a civil action must be accompanied by a Civil Cover Sheet, Form JS-44, available from the clerk. This requirement is solely for administrative purposes.

See DUCivR 23-1 for caption requirements for class action complaints/pleadings.

DUCivR 3-5 CONTENT OF THE COMPLAINT

The complaint is the initial pleading that commences a civil action. It should state the basis for the court's jurisdiction, the basis for the plaintiff's claim or cause for action, and the demand for relief. The complaint should not include any motion. Any motion intended to accompany a complaint, such as a motion for a temporary restraining order, must be prepared and filed as a separate document.

DUCivR 5-1 FILING OF PAPERS

(a) <u>Electronic Filing Permitted</u>.

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) <u>Filing of Pleadings and Papers</u>.

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) by mail, or (iii) through the court's electronic filing system. At the time of filing of a document pursuant to subparagraphs (i), (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 5-2 FILING CASES AND DOCUMENTS UNDER COURT SEAL

(a) **General Rule.**

The records of the court are presumptively open to the public. The court has observed that counsel are increasingly and improperly overdesignating sealed materials in pleadings and documents filed with the court. In order to prevent such overdesignation, the court is now requiring counsel to be highly selective in filing documents under seal. A portion of a document or portion of a pleading shall be filed under seal only if the document or pleading, or portions thereof, are privileged or protectable as a trade secret or otherwise entitled to protection under the law (hereinafter "Sealed Material"). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. To prevent the overdesignation of sealed materials in the court record, counsel shall:

(1) Refrain from filing memoranda under seal merely because the attached exhibits contain confidential information;

(2) Redact personal identifiers, discussed in DuCivR 5.2-1, and not use the presence of personal identifiers as a basis for sealing an entire document; and

(3) Redact documents when the confidential portions are not directly pertinent to the issues before the court and publicly file the documents.

The court recognizes that on rare occasions, statutes, rules, and orders in specific cases may require restriction of public access. On motion of a party and a showing of good

cause, a judge may order a case, a document, or a portion of a document filed in a civil case to be sealed.

(b) Sealing of New Cases.

(1) On Ex Parte Motion. In extraordinary circumstances, and upon a judge's order granting an ex parte motion of the plaintiff or petitioner, an entire case may be sealed at the time it is filed.

(2) Civil Actions for False Claims. When an individual files a civil action on behalf of the individual and the government pursuant to 31 U.S.C. § 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.

(c) Sealing of Pending Cases.

A pending case may be sealed at any time upon a judge's sua sponte order or the granting of a motion by any party.

(d) Procedure for Filing Documents Under Seal.

Documents ordered sealed by the court or otherwise required to be sealed by statute must be delivered to the court for filing in the following manner:

(1) Original Document. The original document must be unfolded in an envelope with a copy of the document's cover page affixed to the outside of the envelope. The cover page must include a notation that the document is being filed under court seal and must indicate one of the following reasons why the document has been filed under seal:

(A) it is accompanied by a court order sealing the document;

(B) it is being filed in a case that the court has ordered sealed; or

(C) the document contains Sealed Material.

Any exhibits filed must include a paper index to the exhibits, including the title (description) of the exhibit and the exhibit number.

(2) CD-ROM. The sealed filing must be accompanied by a CD-ROM (or other tangible electronic media) containing a PDF version of each document filed, including exhibits and the index of exhibits. The CD-ROM shall be placed in the

same envelope as the original document and shall be marked with the case name, case number, and the date of delivery,

(3) Courtesy Copies. Courtesy copies of both the document and the CD-ROM, prepared in the manner described above, shall be delivered at the same time as the originals. Individual chambers may also notify counsel that an electronic version of the sealed document shall be delivered to chambers via email or other method of secured electronic delivery.

(4) Notice of Conventional Filing. When a sealed document is delivered to the court, the filer shall electronically file a "Notice of Conventional Filing."

(e) Filing Memoranda That Contain Sealed Material

(1) Two Versions of Memorandum Must Be Filed. If a party refers in a memorandum to Sealed Material, two versions of the memorandum must be filed with the court: a confidential, sealed memorandum and a nonconfidential, redacted memorandum.

(A) Sealed Memorandum. One memorandum shall be labeled "FILED UNDER SEAL." The specific confidential material must be highlighted, put in brackets, or otherwise designated as confidential. This memorandum shall be filed as set forth above in 5.2(d).

(B) Nonconfidential, Redacted Memorandum. A memorandum from which confidential matter has been redacted shall be labeled "REDACTED-NONCONFIDENTIAL" and electronically filed with the court. The caption of the redacted version of each sealed document and the docket entry created when the document is filed shall identify the title of the sealed document, its docket number, and the date on which the sealed version was filed. The redacted version of the memorandum must be filed within fourteen (14) days of filing the sealed version. Failure to file a redacted version within the time prescribed may result in the court's unsealing the memorandum.

(2) Exceptions. Subsection (e)(1) does not apply to:

(A) Filings in cases that have been sealed pursuant to statute or court order; or

(B) A memorandum that contains such an abundance of confidential information that filing a redacted version of the memorandum would not be meaningful. In this situation, counsel shall file a declaration pursuant to Section(e)(3) below so stating.

(3) Declaration Required. The lead attorney on the case shall file a declaration certifying that the sealed exhibits, memoranda, and/or other documents are privileged or protectable as a trade secret or otherwise entitled to protection under the law and that the sealed filing has been narrowly tailored to protect only the specific information truly deserving of protection.

(4) Resolutions of Disputes; Party Seeking Protection Bears Burden.

(A) If a party intends to refer to and file Sealed Material, and the filing party is unable to ascertain what information was intended to be protected, the filing party shall notify the designating party of the uncertainty, and the parties shall meet and confer so that the protected information may be highlighted as confidential as required in 5.2(e)(1)(A) and then redacted in the publicly filed version as required in 5.2(e)(1)(B).

(i) If the uncertainty is not resolved by the time the filing is made, the filing party shall:

(a) file the document(s) under seal;

(b) file a certification that the parties attempted to confer in good faith and that a Declaration, as required by 5.2(e)(3), cannot be filed; and

(c) file a notice to opposing counsel to prepare a redacted version for the filing party to file in the public docket within fourteen (14) days.

(ii) If the party seeking protection does not provide to the filing party a redacted version of the memorandum within fourteen (14) days of the filing of the sealed document, the filing party shall file, within seven (7) days, a notice that the court may unseal the document.

(B) A party who contends that a document was improperly filed under seal may notify the filing party of the contention. The parties shall then meet

and confer. If conferral does not result in agreement, the party challenging the designation may file a Notice of Dispute Regarding Sealed Document(s).

(i) The party to whom the Notice of Dispute is directed must file, within fourteen (14) days of filing date of the notice, a motion to preserve the seal. If no such motion is timely filed, the other party may file a brief motion to remove the seal, attaching the notice given. The motion to remove the seal shall be summarily granted without briefing or hearing. If a motion is timely filed, the opposing side need not respond, unless ordered to do so by the court.

(f) **Access to Sealed Cases and Documents.**

Unless otherwise ordered by the court, the clerk will provide access to cases and documents under court seal only on court order. Unless otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

DUCivR 5-3 HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS

(a) **Form.**

Petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255, and pro se civil rights complaints under 42 U.S.C. § 1983 et seq., must (i) be in writing, signed, and verified, and (ii) comply with 28 U.S.C. §§ 2254 and 2255. Forms for such actions are available from the clerk of court.

(b) **Supporting Affidavit.**

A petition, motion, or complaint submitted for filing with an Application to Proceed Without Prepayment of Fees and Affidavit must be accompanied by a supporting affidavit in compliance with DUCivR 3-2. In actions by persons who are incarcerated, this affidavit must be accompanied by (i) a certification, executed by prison officials, as to the availability of funds in any account maintained by the institution for the petitioner or movant, and (ii) documentation of any account activity in the six (6) months preceding the filing date.

(c) **Filing Requirements.**

Petitioners or movants seeking post-conviction relief must file with the clerk of court the original and one copy of the petition, motion, or complaint. If proceeding without prepayment of fees, petitioners and movants, in addition to the original and any required copies, as prescribed in DUCivR 5-1(a), must provide the clerk with one copy for each person named as a defendant in the petition, motion, or complaint.

(d) **Answers and Responses.**

Unless otherwise ordered by the court, petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255 do not require an answer or other responsive pleading.

DUCivR 5.2 - 1 REDACTING PERSONAL IDENTIFIERS

(a) **Redacting Personal Identifiers in Pleadings.**

The filer shall redact personal information in filings with the court, as required by Fed. R. Civ. P. 5.2. The court may order redaction of additional personal identifiers by motion and order in a specific case or as to a specific document or documents. Any protective order under Fed. R. Civ. P. 26 (c) may include redaction requirements for public filings.

(b) **Redacting Personal Identifiers in Transcripts.**

Attorneys are responsible to review transcripts for personal information which is required to be redacted under Fed. R. Civ. P 5.2 and provide notice to the court reporter of the redactions which must be made before the transcript becomes available through PACER. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

(1) opening and closing statements made on the party's behalf;

(2) statements of the party;

(3) the testimony of any witnesses called by the party; and

(4) any other portion of the transcript as ordered by the court.

Redaction responsibilities apply to the attorneys even if the requestor of the transcript is the court or a member of the public including the media.

(c) **<u>Procedure for Reviewing and Redacting Transcripts</u>.**

Upon notice of the filing of a transcript with the court, the attorneys shall within seven (7) business days review the transcript and file, if necessary, a Notice of Intent to Request Redaction of the Transcript. Within twenty-one (21) calendar days of the filing of the transcript, the attorneys shall file a notice of redactions to be made. The redactions shall be made by the court reporter within thirty-one (31) calendar days of the filing of the transcript and a redacted copy of the transcript shall promptly be filed with the clerk. Transcripts which do not require redactions and redacted transcripts shall be electronically available on PACER ninety days (90) after filing of the original transcript by the court reporter.

DUCivR 6-1 FILING DEADLINES WHEN COURT IS CLOSED

When the court is closed by administrative order of the chief judge, any deadlines which occur on that day are extended to the next day that the court is open for business.

See DUCivR 77-2 for the clerk's authority to extend time.

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) **<u>Motions</u>.**

All motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Copies shall be provided as required by DUCivR 5-1.

(1) <u>No Separate Supporting Memorandum for Written Motion.</u>

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 motion; and

(B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.

Specific instructions regarding Motions for Summary Judgment are provided in DUCivR 56-1. Failure to comply with the requirements of this section may result in sanctions, including (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) any other sanction deemed appropriate by the court.

(2) 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 statement 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;

(C) to appoint a next friend or guardian ad litem;

(D) to substitute parties;

(E) for referral to or withdrawal from the court's ADR program;

(F) for settlement conferences; and

(G) for approval of stipulations between the parties.

For such motions, a proposed order shall be attached as an exhibit to the motion and also emailed in an editable format to the chambers of the assigned judge.

(3) Length of Motions.

(A) Motions Filed Pursuant to Rules 12(b), 12(c), 56, and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, statement of elements and undisputed material facts, and exhibits.

(B) All Other Motions: All motions that are not listed above must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of

contents, statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, and exhibits.

(4) Motions Seeking Relief Similar to Another Party's Motion

Each party seeking relief from the Court must file its own motion stating the relief sought and the basis for the requested relief. A party may incorporate by reference the arguments and reasons set forth in another party's motion or memorandum to the extent applicable to that party. [1]

(b) Response and Reply Memoranda.

(1) Motions Are Not to Be Made in Response or Reply Memoranda; Evidentiary Objections Permitted.

(A) No motion, including but not limited to cross-motions and motions pursuant to Fed. R. Civ. P. 56(d), may be included in a response or reply memorandum. Such motions must be made in a separate document. A cross-motion may incorporate the briefing contained in a memorandum in opposition.

(B) For motions for which evidence is offered in support, the response memorandum may include evidentiary objections. If evidence is offered in opposition to the motion, evidentiary objections may be included in the

[1] Advisory Committee Note: This subsection was promulgated to solve the following problem that has occasionally arisen: A and B are defendants in an action, represented by different counsel. During the course of litigation, A files a motion for summary judgment. Because the grounds for summary judgment in A's motion apply equally to B, B files a "Notice of Joinder" in A's motion. By filing such a notice, however, B is merely joining in a motion to grant summary judgment to A. B is not specifically requesting summary judgment for itself. Assuming the court grants A's motion for summary judgment, confusion has arisen as to whether the court also granted summary judgment for B. To avoid this situation, this rule now requires A and B to each file a separate motion for summary judgment. However, instead of filing duplicative arguments, B's motion for summary judgment may simply request summary judgment and incorporate by reference A's motion as the grounds for granting B's motion. A party may, but is not required to, include a hyperlink to the incorporated memoranda. Once both motions are filed, the court will have to rule on each party's motion separately, which will eliminate the ambiguity that comes from merely filing a "Notice of Joinder" in another party's motion.

reply memorandum. While the court prefers objections to be included in the same document as the response or reply, in exceptional cases, a party may file evidentiary objections as a separate document. If such an objection is filed in a separate document, it must be filed at the same time as that party's response or reply memorandum. If new evidence is proffered in support of a reply, any evidentiary objection must be filed within seven (7) days after service of the reply. A party offering evidence to which there has been an objection may file a response to the objection at the same time any responsive memorandum, if allowed, is due, or no later than seven (7) days after the objection is filed, whichever is longer. Motions to strike evidence as inadmissible are no longer appropriate and should not be filed. The proper procedure is to make an objection. See Fed. R. Civ. P. 56(c)(2).

(2) Length of Response and Reply Memoranda.

(A) Memoranda Filed Regarding Motions Made Pursuant to Rules 12(b), 12(c), 56, and 65 of the Federal Rules of Civil Procedure: Memoranda in opposition to motions made pursuant to Fed. R. Civ. P. 12(b), 12(c), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, response to the statement of elements and undisputed material facts, any statement of additional elements and/or undisputed material facts, table of exhibits, and exhibits. Reply memoranda must be limited to ten (10) pages, exclusive of face sheet, table of contents, any additional facts, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(B) All Other Motions: Response memoranda related to all motions that are not listed above must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, table of exhibits, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages,

exclusive of face sheet, table of contents, table of exhibits, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(3) Filing Times.

(A) Motions Filed Pursuant to Rules 12(b), 12(c), and 56 of the Federal Rules of Civil Procedure: A memorandum opposing motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56 must be filed within twenty-eight (28) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within fourteen (14) days after service of the opposing memorandum. The court may order shorter briefing periods and attorneys may also so stipulate.

(B) All Other Motions, Including Motions Filed Pursuant to Rule 65 of the Federal Rules of Civil Procedure: A memorandum opposing any motion that is not a motion filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56 must be filed within fourteen (14) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within fourteen (14) days after service of the memorandum opposing the motion. The court may order shorter briefing periods and attorneys may also so stipulate.

(4) 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 notice 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 notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(c) **Supporting Exhibits to Memoranda.**

If any memorandum in support of or opposition to a motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.[2]

(d) **Failure to Respond.**

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

(e) **Leave of Court and Format for Lengthy Motions and Memoranda.**

If a motion or memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy motion or memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved. A lengthy motion or memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Motions or memoranda exceeding page limitations, for which leave of court has been obtained, must contain a table of contents, with page references, listing the titles or headings of each section and subsection.

(f) **Oral Arguments on Motions.**

The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

See DUCivR 56-1 for specific provisions regarding summary judgment motions and related memoranda.

[2] For summary judgment motions, see DuCivR 56-1(f).

DUCivR 7-2 CITING UNPUBLISHED JUDICIAL DECISIONS

(a) Precedential Value.

The citation of unpublished decisions is permitted. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.

(b) Citation Form.

Citation to unpublished opinions must include an appropriate parenthetical notation stating that it is an unpublished decision. E.g., *United States v. Wilson*, No. 06-2047, 2006 WL 3072766 (10th Cir. Oct. 31, 2006) (unpublished); *United States v. Keeble*, No. 05-5190, 184 Fed. Appx. 756, 2006 U.S. App. LEXIS 14871 (10th Cir. June 15, 2006) (unpublished); *United States v. Gartrell*, No. 2:04CR97 DB, 2005 WL 2265362 (D. Utah Sept. 7, 2005) (unpublished). References to unpublished decisions should include an appropriate electronic citation where possible.

(c) Copies.

If an unpublished decision is not available in a publicly accessible electronic database, such as a commercial database maintained by a legal research service or a database maintained by a court, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Even if such decisions are available in a publicly accessible database, counsel should provide copies of the cited unpublished decision upon request.

DUCivR 7-3 REQUEST TO SUBMIT FOR DECISION

When the briefing on a motion has been completed or when the time for such briefing has expired, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date of the reply memorandum, if any, was served, and whether a hearing has been requested.

DUCivR 7-4 FILINGS IN ALL ACTIONS SEEKING JUDICIAL REVIEW OF A DECISION FROM AN ADMINISTRATIVE AGENCY

(a) <u>Review of Administrative Agency Decisions Other Than Those From the Commissioner of the Social Security Administration.</u>

(1) Except in cases challenging decisions of the Commissioner of the Social Security Administration, in all other cases in which a plaintiff files a complaint or petition seeking judicial review of an administrative agency's decision under an "arbitrary and capricious" or "substantial evidence" standard of review, the following pleadings are not appropriate and shall not be filed with the court:

(A) An answer to the complaint;

(B) A motion for judgment on the pleadings;

(C) A motion for summary judgment; or

(D) A motion to affirm or reverse the agency's decision.

(2) Within the time prescribed by statute, rule, or court order, an agency whose decision is the subject of the complaint shall file one of the following responsive documents:

(A) A motion to dismiss under Fed. R. Civ. P. 12(b);

(B) A short and plain statement admitting or denying that the agency decision, or any part thereof, is arbitrary and capricious or is not supported by substantial evidence, along with a statement of any affirmative defenses.

(3) The Federal Rules of Civil Procedure continue to apply in proceedings under this subsection unless judicial authority, the rules themselves, or these rules require otherwise.[3]

(4) If the court denies the motion to dismiss, the agency must file a short and plain statement either denying or admitting that the agency decision is arbitrary and capricious or is not supported by substantial evidence within the time prescribed in Fed. R. Civ. P. 12(b)(4).

[3] Advisory Committee Note: This provision is inserted to avoid ambiguity as to whether the Federal Rules of Civil Procedure will continue to govern other matters that arise in litigation challenging agency decisions such as amendments to complaints, motions to intervene, motions for injunctive relief, and other matters not otherwise precluded by judicial authority, the rules themselves, or these rules.

(5) Unless the court orders otherwise, within 14 days of filing a statement denying that the challenged agency decision is arbitrary and capricious or is not supported by substantial evidence, the agency shall file and serve upon all parties an indexed copy of the administrative record.

(6) Within 14 days of filing the agency's short an plain statement, and in lieu of an Attorney Planning meeting report under Fed. R. Civ. P. 26(f), the parties shall submit a proposed scheduling order stating the dates by which:

(A) The agency will file the administrative record;

(B) Objections to the administrative record and responses thereto will be filed and served upon opposing counsel;

(C) Any other pre-merits motions will be due;

(D) Plaintiff will file an "Opening Brief," which must be filed as a "Motion" for "Review of Agency Action" in CM/ECF;

(E) The agency will file an "Opposition Brief," which must be filed as a "Memorandum in Opposition to Motion" and linked to the "Motion" for "Review of Agency Action" in CM/ECF; and

(F) Plaintiff may file and serve on opposing counsel a "Reply Brief," which shall be limited to addressing only those issues raised in the Opposition Brief, and must filed as a "Reply Memorandum/Reply to Response to Motion" and linked to the "Motion" for "Review of Agency Action" in CM/ECF.[4]

The proposed scheduling order shall briefly state the issues on which plaintiff claims error in the agency decision and the basis for which the agency claims that its decision was not arbitrary and capricious or was supported by substantial evidence. Once entered, the scheduling order shall govern the timing of the parties' respective briefs unless the court modifies its order. Unless the court orders otherwise, no briefs other than those mentioned above will be received.

[4] In the CM/ECF system, filings entitled as "motions" appear on a CM/ECF report that assists the Court in managing its docket. For this reason, parties are to name their documents "Opening Brief," "Opposition Brief," and "Reply Brief," respectively, but must use the CM/ECF categories listed above for filing to make sure that the case receives proper treatment in the CM/ECF reports, which will assist the Court in managing its docket.

(7) The Opening Brief must follow Fed. R. App. P. 28(a)(2), (3), (5), (6)-(10). The Opposition Brief must follow Fed. R. App. P. 28(b) except that it need not follow the requirements of Fed. R. App. P. 28(a)(1) or (4). The Reply Brief must follow Fed. R. App. P. 28(c). The formatting requirements of DUCivR 10-1 apply to all briefs filed under this section. The length of the parties' briefs is governed by Fed. R. App. P. 32(a)(7). Motions for overlength briefs may be granted only upon a showing of good cause.

(b) **<u>Judicial Review of Decisions from the Commissioner of the Social Security Administration.</u>**

(1) In cases seeking judicial review of a decision from the Commissioner of the Social Security Administration, motions for judgment on the pleadings, for reversal or for summary judgment, or to "affirm or review the Commissioner's decision" are not appropriate and shall not be filed with the court. The parties shall file the following pleadings in accordance with the scheduling order entered in the case:

(A) Plaintiff shall file, and serve on opposing counsel, an "Opening Brief." In the Opening Brief, plaintiff shall set forth the specific errors upon which plaintiff seeks reversal of the Commissioner's decision.

(B) Defendant shall file, and serve on opposing counsel, an "Answer Brief." In the Answer Brief, defendant shall address the errors identified by plaintiff.

(C) Plaintiff may file, and serve on opposing counsel, a "Reply Brief." In the Reply Brief, plaintiff shall address only those issues raised in defendant's Answer Brief.

This rule does not preclude the parties from filing other motions they deem proper under the Federal Rules of Civil Procedure.

(2) Plaintiff's Opening Brief and Defendant's Answer brief must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits. Plaintiff's Reply Brief must not exceed ten (10) pages. If a brief is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy brief must include a statement of

the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved.

DUCivR 7-5 HYPERLINKS IN COURT FILINGS

(a) <u>Encouraged and Impermissible Hyperlinks.</u>

As a convenience for the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. For purposes of this rule, a hyperlink is a reference within an electronically filed document that permits a user to click on the reference so as to be directed to other content. Standard legal citations must still be used so that those who desire to retrieve referenced material may do so without use of an electronic service.

(1) <u>Encouraged Hyperlinks.</u>

(A) Hyperlinks to other portions of the same document and to material elsewhere in the record, such as exhibits or deposition testimony, are encouraged.

(B) A hyperlink to a government site or to legal authority from recognized electronic research services, such as Westlaw, Lexis/Nexis, Google Scholar, Casemaker, Fastcase or Findlaw is encouraged.

(2) <u>Permissible Hyperlinks.</u>

A hyperlink to any other internet resource not identified in subsection (a)(1)(B) is permissible in any document filed with the court, provided that the attorney or party adding the hyperlink downloads the content thus cited and attaches it to the document in PDF format, or if the referenced content is a media object in a format not acceptable for CM/ECF filing, submits the content with Notice of Conventional Filing pursuant to Section II(E)(6) of the District of Utah CM/ECF Administrative Procedures Manual.

DUCivR 9-1 ALLOCATION OF FAULT

(a) <u>Allocating Party Filing Requirements</u>.

Any party that seeks to allocate fault to a nonparty pursuant to Utah Code Annotated § 78B-5-818, shall file:

(1) A description of the factual and legal basis on which fault can be allocated; and

(2) Information known or reasonably available to the party that identifies the non-party, including name, city and state of residence, and employment. If the identity of the nonparty is unknown, the party shall so state in its filing.

(b) <u>Allocating Party Time Requirements</u>.

The information specified in subsection (a) must be included in the party's responsive pleading if known to the party. Alternatively, it must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated, but not later than any deadline specified in the scheduling order. Upon motion and good cause shown, the court may permit the party to file the information specified in subsection (a) after the expiration of any deadlines provided for in this rule, but in no event later than ninety (90) days before the scheduled trial date.

See DUCivR 7-1 for court policy and procedural requirements regarding motions and memoranda.

DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) <u>Form of Pleadings and Other Papers</u>.

(1) Except as otherwise permitted by the court, all pleadings, motions, and other papers filed by institutionalized persons whether presented for filing in person, by mail, or via CM/ECF must have a top margin of not less than 1½ inches, all other margins of not less than 1 inch. The paper size must be 8.5 inches by 11 inches.

(2) For filings submitted by mail or in person, originals must be on white, high quality paper, with printing on only one side. Filed originals must also be flat and unfolded;

(3) Filings submitted via CM/ECF must also comply with latest version of the District of Utah CM/ECF and E-filing Administrative Procedures Manual.

Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for filing with the court. Text must be typewritten or plainly printed and double-spaced except for quoted material and footnotes. Exhibits attached to the original of any pleading, motion, or paper shall not be separately tabbed with dividers, but an 8 ½ x 11-inch sheet shall be inserted to separate and identify each exhibit. Judges' copies of pleadings and exhibits may include tabbed dividers for the convenience of chambers. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting, e-mail address, and Utah State Bar Number[5]

Attorney For

Address

Telephone

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, _____ DIVISION

Name of Case	**Case No. w/ District Judge Initials** **TITLE OF DOCUMENT** **District or Magistrate Judge's Name (When Applicable)**

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents, not attached to or included in

[5] Pursuant to DUCivR 83-1-3, any changes to this name and contact information must be transmitted immediately to the office of the clerk. Attorneys admitted to practice Pro Hac Vice are not required to include a bar number.

motions or pleadings. All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

Central Division Civil Cases 2:11CV0001 DB

Northern Division Civil Cases 1:11CV0001 DB

Central Division Criminal Cases 2:11CR0001 DB

Northern Division Criminal Cases 1:11CR0001 DB

Legend:

2 = Central Division
1 = Northern Division
11 = Calendar Year
CV = Civil Case
CR = Criminal Case
0001 = Consecutive Case Number
DB= Assigned Judge

The title of each document must indicate its nature and on whose behalf it is filed. Where jury trial is demanded in or by endorsement upon a pleading as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" must be placed in capital letters on the first page immediately below the title of the pleading. Where a matter has been referred to a magistrate judge, the caption for all motions, pleadings, and related documents in the matter must include the name of the magistrate judge below the title of the document.

(b) **Font Requirements.**

The required font type is Times New Roman or Arial and the font size must be a minimum of 12, including footnotes, although larger font sizes are acceptable. All page limits as set forth in these rules apply, even if a party elects to use a font size larger than 12.

(c) **Examination by the Clerk.**

The clerk of court will examine all pleadings and other papers filed and may require counsel to properly revise or provide required copies of pleadings or other papers not conforming to the requirements set forth in these rules.

DEFENSES AND OBJECTIONS-WHEN AND HOW PRESENTED-BY PLEADING OR MOTION-MOTION FOR JUDGMENT ON THE PLEADINGS

No corresponding local rule; however, see DUCivR 7-1 for guidelines on motions and memoranda; DUCivR 7-2 for guidelines on citing unpublished opinions; and DUCivR 56-1 for guidelines on summary judgment motions and memoranda in support of or in opposition to such motions.

DUCivR 15-1 AMENDED COMPLAINTS

Parties moving under FRCP 15-1 to amend a complaint must attach the proposed amended complaint as an exhibit to the motion for leave to file. A party who has been granted leave to file must subsequently file the amended complaint with the court. The amended complaint filed must be the same complaint proffered to the court, unless the court has ordered otherwise.

DUCivR 16-1 PRETRIAL PROCEDURE

(a) <u>Pretrial Scheduling and Discovery Conferences</u>.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order. When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR program, and (iv) the discovery cutoff date. If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

(A) Unless otherwise ordered by the court, the following categories of cases are exempt from these scheduling conference and scheduling order requirements:

(i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;

(ii) Cases filed by parties appearing pro se or in which all defendants are pro se;

(iii) Bankruptcy appeals and withdrawals;

(iv) Forfeiture and statutory penalty actions;

(v) Internal Revenue Service third-party and collection actions;

(vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;

(vii) Actions to enforce or quash administrative subpoenas;

(viii) Cases subject to multidistrict litigation;

(ix) Actions to compel arbitration or set aside arbitration

(x) Proceedings to compel testimony or production of documents in actions pending in another district or to perpetuate testimony for use in any court; and

(xi) Cases assigned to be heard by a three-judge panel.

(B) Unless otherwise ordered by the court, as a matter of general court policy, incarcerated or otherwise detained pro se parties will not be required to comply with Fed. R. Civ. P. 26(f).

(b) <u>Magistrate Judge</u>.

The court may designate a magistrate judge to hold the initial scheduling or any pretrial conference. The court generally will conduct the final pretrial conference in all contested civil cases.

(c) <u>Attorneys' Conference</u>.

At a time to be fixed during the scheduling conference, but at least ten (10) days prior to the final pretrial conference, counsel for the parties will hold an attorneys' conference to

discuss settlement, a proposed pretrial order, exhibit list and other matters that will aid in an expeditious and productive final pretrial conference.

(d) **Final Pretrial Conference.**

Trial counsel must attend the final pretrial conference with the court. Preparation for this final pretrial conference should proceed pursuant to Fed. R. Civ. P. 16 and should include (i) preparation by plaintiff's counsel of a recommended pretrial order that is submitted to other counsel at least five (5) days prior to the final pretrial date, and (ii) preparation for resolution of unresolved issues in the case.

(e) **Pretrial Order.**

At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is on the court's website http://www.utd.uscourts.gov. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

(a) **Authority.**

Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established a court-annexed alternative dispute resolution (ADR) program for the District of Utah.

(b) **Procedures Available.**

The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.

(c) **Cases Excluded from ADR Program.**

(1) Prisoner is a Party. Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party will not be subject to this rule.

(2) Excluded from Referral to Arbitration. Pursuant to the 1998 Alternative Dispute Resolution Act, the following types of cases may be referred to mediation but are excluded from referral to arbitration in the court's ADR program.

(A) The action originates as a bankruptcy adversary proceeding, as an appeal from the bankruptcy court, or as a review of judgment of administrative law forums or other official adjudicated proceeding;

(B) The action is based on an alleged violation of a right secured by the Constitution of the United States; or

(C) Jurisdiction is based in whole or in part on 28 USCA §1343.

(d) **Certificate of ADR Election.**

Except as excluded by section (c) of this rule, all counsel in civil actions should discuss the court's ADR program with their clients. The clerk will automatically issue to counsel a Notice of ADR which advises that any party at any time may contact the ADR program administrator in the office of the clerk to discuss or to request that the matter be referred to the ADR program. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties whether to order referral of the matter to the program.

(e) **Case Referral Procedure.**

Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. Referrals to mediation may be made after consultation with the parties at the initial scheduling conference either on motion of one or more parties or on the court's motion. Referrals to arbitration may be made after consultation with the parties at the initial scheduling conference or on motion of one or more parties and the consent of all parties. The order will designate whether the case is referred to mediation or arbitration.

(f) **Stay of Discovery.**

Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a

civil action to the court's ADR program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR program.

(g) **ADR Case Administration.**

The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan, a copy of which is appended to these rules.

(h) **Supervisory Power of the Court.**

Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C., the Federal Rules of Civil Procedure, and these rules.

(i) **Compliance Judge.**

The court will designate a district or magistrate judge to serve as the ADR compliance judge (ADR judge) to hear and determine complaints alleging violations of provisions of this rule or the ADR Plan. When necessary, the chief judge may designate an alternative district or magistrate judge to temporarily perform the duties of the ADR judge.

(j) **Violations of the Rules Governing the ADR Program.**

(1) Complaints. A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s) has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing or under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.

(2) Confidentiality. Absent a waiver of confidentiality by all necessary persons, or an order of the court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.

DUCivR 16-3 SETTLEMENT CONFERENCES

(a) <u>Authority for Settlement Conferences</u>.

The assigned judge may require, or any party may at any time request, the scheduling of a settlement conference.

(b) <u>Referral of Cases for Purposes of Conducting a Settlement Conference</u>.

Under Fed. R. Civ. P. 16(a)(5) and (c)(9) and 28 U.S.C. § 636(b)(1), the district judge to whom the case has been assigned for trial may refer it, for the purpose of undertaking a settlement conference, either to another district judge or to a magistrate judge.

(c) <u>Settlement Proceedings</u>.

The settlement judge or magistrate judge may require the presence of the parties and their counsel, may meet privately from time to time with one party or counsel, and may continue the settlement conference from day to day as deemed necessary. The settlement judge may discuss any aspect of the case and make suggestions or recommendations for settlement. Counsel for each party to the settlement conference must ensure that a person or representative with settlement authority or otherwise authorized to make decisions regarding settlement is available in-person for the full duration of the settlement conference. If the person present does not have full settlement authority, a person with full settlement authority must be directly available by telephone during the settlement conference.

(d) <u>Confidential Nature of Settlement Proceedings</u>.

The settlement conference will be conducted in such a way as to permit an informal, confidential discussion among counsel, the parties, and the settlement judge. The settlement judge may require settlement memoranda to be submitted either with or without service upon the other parties and counsel participating in the settlement conference, but such memoranda must neither be made a part of the record nor filed with the clerk of court. The settlement judge may not communicate to the trial judge to whom the case has been assigned the confidences of the conference, except to report whether or not the case has been settled. Such report must be made in writing, with copies to the parties and their counsel, within a reasonable time following the conference or within such time as the trial judge may direct. If the case does not settle, no oral or written

communication made during the settlement conference may be used in the trial of the case or for any other purpose.

FED. R. CIV. P. 22
INTERPLEADER

No corresponding local rule; however, see DUCivR 67-1 for provisions on deposit of funds into the court registry.

DUCivR 23-1 DESIGNATION OF PROPOSED CLASS ACTION

(a) Caption.

In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action must include within the caption the words, "Proposed Class Action."

(b) Class Allegation Section.

Any pleading purporting to commence a class action shall contain a separate section entitled “Class Action Allegations” setting forth the information required below in subsection (c).

(c) Class Action Requisites.

The class action allegation section shall address the following:

(1) The definition of the proposed class;

(2) The size of the proposed class;

(3) The adequacy of representation by the class representative;

(4) The common questions of law and fact;

(5) The typicality of claims or defenses of the class representative;

(6) The nature of the notice to the proposed class; and

(7) If proceeding under Fed. R. Civ. P 23(b)(3), the additional matter pertinent to the findings as provided by that subdivision.

(d) Motion for Certification.

Unless the court otherwise orders, the proponent of a class shall file a motion for certification that the action is maintainable as a class action within ninety (90) days after

service of a pleading purporting to commence a class action, including cross claims and counterclaims. In cases removed or transferred to this court, the motion shall be filed within ninety (90) days of the removal or transfer.

DUCivR 24-1 NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

(a) <u>An Act of Congress</u>.

Whenever the constitutionality of any act of Congress affecting the public interest is, or is intended to be, drawn into question in any suit or proceeding to which the United States, or any of its agencies, officers, or employees, is not a party, counsel for the party raising or intending to raise such constitutional issue must promptly notify the clerk, in writing, specifying the applicable act or the provisions, a proper reference to the title and section of the United States Code if the act is included in it, and a description of the claim of unconstitutionality.

Upon receipt of such notice, the clerk on behalf of the court will file a certificate with the Attorney Gener

The United States District Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, Title _____, Section _____, United States Code (or other description) is drawn into question the case of _____ v. _____, Case No. _____, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(a) of the United States Code, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will send copies of the certificate to the United States attorney for the District of Utah and to the district judge to whom the case is assigned.

(b) <u>A Statute of a State</u>.

Whenever the constitutionality of any statute of a state affecting the public interest is, or is intended to be, drawn into question in any suit or proceeding to which the state or any of its agencies, officers, or employees, is not a party, counsel for the party raising or

intending to raise such constitutional issue must promptly notify the clerk, in writing, specifying the act or its provisions, a reference to the title and section of the statute, if any, of which the act is part, and a description of the claim of unconstitutionality.

Upon the receipt of such notice, the clerk on behalf of the court will file a certificate with the attorney general of the state in substantially the following form:

The United States District Court for the District of Utah hereby certifies to the Attorney General of the State of _____, that the constitutionality of Title _____, Chapter _____, Section _____, (or other description) is drawn in question in the case of _____ v._____, Case No. _____, to which neither the State of _____, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(b) of the United States Code, the State of _____ is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will send a copy of the certificate to the district judge to whom the case is assigned.

DUCivR 26-1 DISCOVERY REQUESTS AND DOCUMENTS

(a) <u>Form of Responses to Discovery Requests</u>.

Parties responding to interrogatories under Fed. R. Civ. P. 33, requests for production of documents or things under Fed. R. Civ. P. 34, or requests for admission under Fed. R. Civ. P. 36 must repeat in full each such interrogatory or request to which response is made. The parties also must number sequentially each interrogatory or request to which response is made.

(b) <u>Filing and Custody of Discovery Materials</u>.

(1) <u>Filing</u>. Unless otherwise ordered by the court, counsel must not file with the court the following:

(A) all disclosures made under Fed. R. Civ P. 26(a)(1);

(B) depositions or notices of taking deposition required by Fed R. Civ. P. 30(b)(1);

(C) interrogatories;

(D) requests for production, inspection or admission;

(E) answers and responses to such requests; and,

(F) certificates of service for any of the discovery materials referenced in (A) through (E).

This section does not preclude the use of discovery materials at a hearing, trial, or as exhibits to motions or memoranda.

(2) Custody. The party serving the discovery material or taking the deposition must retain the original and be the custodian of it.

DUCivR 26-2 STANDARD PROTECTIVE ORDER AND STAYS OF DEPOSITIONS

(a) Standard Protective Order

The court has increasingly observed that discovery in civil litigation is being unnecessarily delayed by the parties arguing and/or litigating over the form of a protective order. In order to prevent such delay and "to secure the just, speedy, and inexpensive determination of every action," the court finds that good cause exists to provide a rule to address this issue and hereby adopted this rule entering a Standard Protective Order.

(1) This rule shall apply in every case involving the disclosure of any information designated as confidential. Except as otherwise ordered, it shall not be a legitimate ground for objecting to or refusing to produce information or documents in response to an opposing party's discovery request (e. g. interrogatory, document request, request for admissions, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R. Civ. P. 26 (a)(1) that the discovery request or disclosure requirement is premature because a protective order has not been entered by the court. Unless the court enters a different protective order, pursuant to stipulation or motion, the Standard Protective Order available on the Forms page of the court's

http://www.utd.uscourts.gov shall govern and discovery under the Standard Protective Order shall proceed. The Standard Protective Order is effective by virtue of this rule and need not be entered in the docket of the specific case.

(2) Any party or person who believes that substantive rights are being impacted by application of the rule may immediately seek relief.

(b) Motion for Protective Order and Stay of Deposition

A party or a witness may stay a properly noticed oral deposition by filing a motion for a protective order or other relief by the third business day after service of the notice of deposition. The deposition will be stayed until the motion is determined. Motions filed after the third business day will not result in an automatic stay.

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

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the response(s) thereto, and specifying why those responses/objections are inadequate, and;

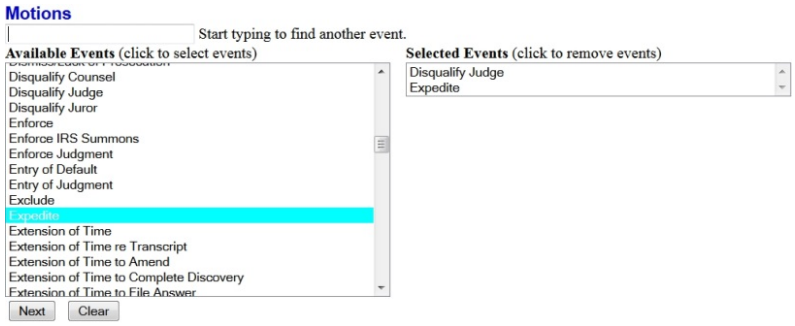
(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also e-mail chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)



(6) The opposing party must file its response five business days[6] after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

(7) To resolve the dispute, the court may:

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

(C) request further briefing and set a briefing schedule.

[6] This provision is not subject to the addition of three (3) days provided by Fed. R. Civ. P. 6(d).

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure.

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

FED. R. CIV. P. 40
ASSIGNMENT OF CASES FOR TRIAL

No corresponding local rule; however, see DUCivR 83-6 for procedural requirements for enforceable stipulations regarding conduct of trials; also see DUCivR 83-2 for assignment of civil cases.

DUCivR 41-1 SANCTIONS: FAILURE TO NOTIFY WHEN SETTLEMENT IS REACHED BEFORE A SCHEDULED JURY TRIAL

In any case for which a trial date has been scheduled, the parties must immediately notify the court of any agreement reached by the parties which resolves the litigation as to any or all of the parties. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by

agreement in advance of the trial date, jury costs paid or incurred may be assessed against the parties and their attorneys as directed by the court. Jury costs will include attendance fees, per diem, mileage, and parking. No jury costs will be assessed if notice of settlement or disposition of the case is given to the jury section of the clerk's office at least one (1) full business day prior to the scheduled trial date.

DUCivR 41-2 DISMISSAL FOR FAILURE TO PROSECUTE

The court may issue at any time an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper.

DUCivR 42-1 CONSOLIDATION OF CIVIL CASES

Any party may file a motion and proposed order to consolidate two or more cases before a single judge if the party believes that such cases or matters:

(i) arise from substantially the same transaction or event;
(ii) involve substantially the same parties or property;
(iii) involve the same patent, trademark, or copyright;
(iv) call for determination of substantially the same questions of law; or
(v) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.

The court may sua sponte enter an order of consolidation.

Any motion pursuant to this rule shall be filed in the lower-numbered case, and a notice of the motion shall be filed in all other cases which are sought to be consolidated. The motion shall be decided by the judge assigned the lower-numbered case. If the motion is granted, the case will be consolidated into the case with the lowest number.

Any order entered sua sponte by the court shall be effective fourteen (14) days after service, unless a party in interest files an objection thereto prior to expiration of such fourteen-day period. If a timely objection is filed, no consolidation shall occur until the court has entered a ruling upon the objection.

DUCivR 43-1 COURTROOM PRACTICES AND PROTOCOL

(a) <u>Conduct of Counsel</u>.

(1) Only one (1) attorney for each party may examine or cross-examine a witness, and not more than two (2) attorneys for each party may argue the merits of the action unless the court otherwise permits.

(2) To maintain decorum in the courtroom, counsel will abide strictly by the following rules:

(A) Counsel will stand, if able, when addressing the court and when examining and cross-examining witnesses.

(B) Counsel will not address questions or remarks to opposing counsel without first obtaining permission from the court. Appropriate quiet and informal consultations among counsel off the record are permitted as long as they neither delay nor disrupt the proceedings.

(C) The examination and cross-examination of witnesses will be limited to questions addressed to the witnesses. Counsel must refrain from making statements, comments, or remarks prior to asking a question or after a question has been answered.

(D) In making an objection, counsel must state plainly and briefly the specific ground of objection and may not engage in argument unless requested or permitted by the court to do so.

(E) Only one (1) attorney for each party may make objections concerning the testimony of a witness when being questioned by an opposing party. The objections must be made by the attorney who has conducted or is to conduct the examination or cross-examination of the witness.

(F) The examination and cross-examination of witnesses must be conducted from the counsel's table or the lectern, except when necessary to approach the witness or the courtroom clerk's desk for the purpose of presenting or examining exhibits.

(b) Exclusion of Witnesses.

On its own motion or at the request of a party, the court may order witnesses excluded from the courtroom so they cannot hear the testimony of other witnesses. This section of this rule does not authorize exclusion of the following: (i) a party who is a natural person; (ii) an officer or employee of a party that is not a natural person and who is designated as that party's representative by its attorney; or (iii) a person whose presence is shown by a party to be essential to the presentation of the case. Witnesses excluded pursuant to Fed. R. Evid. 615 need not be sworn in advance, but may be ordered not to discuss their testimony with anyone except counsel during the progress of the case. Unless otherwise directed by the court for special reasons, witnesses who have testified may remain in the courtroom even though they may be recalled on rebuttal. Unless otherwise directed by the court upon motion of counsel, witnesses once examined and permitted to step down from the stand will be deemed excused. Counsel are encouraged to make requests for exclusion only when necessary to ensure due process.

(c) Arguments.

The court will determine the length of time and the sequence of final arguments.

(d) Presence of Parties and Attorneys upon Receiving Verdict or Supplemental Instructions.

All parties and attorneys are obligated to be present in court when the jury returns its verdict or requests further instructions. Parties and attorneys in the immediate vicinity of the court will be notified, but the return of the verdict or the giving of supplemental instructions will not be delayed because of their absence. If, when notification is attempted, the parties and attorneys are not immediately available in the vicinity of the court, they will be deemed to have waived their presence at the return of the verdict or the giving of supplemental instructions requested by the jury.

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(a)(4). The subpoena may not be served upon the non-party until four (4) days after the service of the notice.[7]

DUCivR 47-1 IMPANELMENT AND SELECTION OF JURORS

(a) Requests for Voir Dire Examination.

Unless the court otherwise orders, any special request for voir dire examination of the jury panel regarding the prospective jurors' qualifications to sit must be submitted in writing to the court and served upon the opposing party or parties at least two (2) full business days prior to the time the case is set for trial, unless the court's examination furnishes grounds for additional inquiry.

(b) Voir Dire Examination and Exercise of Challenges.

The court will examine the jury panel on voir dire and will permit suggestions from counsel for further examination. If any prospective juror is excused for cause, another prospective juror's name will be drawn when required in order to allow for all challenges. When the panel is accepted for cause, the courtroom clerk will present a list of the jurors in the order of their places in the box to counsel, who alternately will exercise or waive such challenges by appropriate indications on the list. Absent a stipulation of the parties to the contrary, the first twelve (12) jurors named on the list who remain unchallenged will constitute the jury.

[7] This provision is subject to the addition of three (3) days provided by Fed.R.Civ.P (6)(d).

DUCivR 47-2 COMMUNICATION WITH JURORS

(a) <u>Communications Before or During Trial</u>.

Unless otherwise ordered by the court, no person associated with a case before the court may communicate with a juror or prospective juror in the case, or with the family or acquaintances of such juror, either before or during trial, except in open court and in the course of the court proceedings. No person, whether associated with the case or not, may discuss with or within the hearing of any juror or prospective juror, any matter touching upon the case or any matter or opinion concerning any witness, party, attorney, or judge in the case.

(b) <u>Communications After Trial</u>.

The court will instruct jurors that they are under no obligation to discuss their deliberations or verdict with anyone, although they are free to do so if they wish. The court may set special conditions or restrictions upon juror interviews or may forbid such interviews. Unless otherwise ordered by the court, juror contact information will not be disclosed by the court or its employees.

DUCivR 48-1 NUMBER OF JURORS; IMPANELING AND SELECTION OF JURY

In all civil cases, absent a stipulation of the parties to the contrary, the trial jury will consist of twelve (12) members, and the verdict of the jury shall be unanimous. The court for good cause, however, may excuse jurors from service during trial or deliberation, in which event the verdict still must be unanimous. No verdict will be taken from a jury of fewer than six members.

DUCivR 51-1 INSTRUCTIONS TO THE JURY

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.

FED. R. CIV. P. 52
FINDINGS BY THE COURT; JUDGMENT OF PARTIAL FINDINGS

No corresponding local rule; however, see DUCivR 54-1 for provisions regarding judgments, orders, and findings of fact and conclusions of law.

DUCivR 54-1 JUDGMENTS: PREPARATION OF ORDERS, JUDGMENTS, FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) <u>Orders in Open Court</u>.

Unless otherwise determined by the court, orders announced in open court in civil cases must be prepared in writing by the prevailing party, served within five (5) days of the court's action on opposing counsel, and submitted to the court for signature pursuant to the provisions of section (b) of this rule.

(b) <u>Orders and Judgments</u>.

Unless otherwise determined by the court, proposed orders and judgments prepared by an attorney must be served upon opposing counsel 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 are filed within seven (7) days after service.

(c) <u>Proposed Findings of Fact and Conclusions of Law</u>.

Except as otherwise directed by the court, in all non-jury cases to be tried, counsel for each party must prepare and lodge with the court, at least two (2) full business days before the day the trial is scheduled to begin, proposed findings of fact and conclusions of

law consistent with the theory of the submitting party and the facts expected to be proved. Proposed findings should be concise and direct, should recite ultimate rather than mere evidentiary facts, and should be suitable in form and substance for adoption by the court should it approve the contentions of the particular party. Proposed findings also will serve as a convenient recitation of contentions of the respective parties, helpful to the court as it hears and considers the evidence and arguments and relates such evidence, or lack of it, to the salient contentions of the parties.

(d) **Written Order Required for Voluntary Dismissals.**

Dismissal of actions by plaintiff prior to the filing of an answer or dismissal by stipulation of all parties who have appeared in the action, pursuant to Fed. R. Civ. P. 41(a)(1), does not require an order of dismissal from the court. However, for clarity of the record, such dismissal should be evidenced by a court order that is prepared by counsel and submitted to the court or the clerk for signature pursuant to the provisions of section (b) of this rule or DUCivR 77-2 of these rules.

See DUCivR 10-1 for format guidelines on preparing orders.

DUCivR 54-2 COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES

(a) **Bill of Costs.**

Within fourteen (14) days after the entry of final judgment, the party entitled to recover costs must file a bill of costs on a form available from the clerk of court, a memorandum of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their being disallowed. Proof of service upon counsel of record of all adverse parties must be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided by Fed. R. Civ. P. 54(d).

(b) **Objections to Bill of Costs**.

Where a party objects to any item in a bill of costs, such objections must be set forth with any supporting affidavits and documentation and must be filed with the court and served on counsel of record of adverse parties within fourteen (14) days after filing and service of the bill of costs. The party requesting the costs may file a reply to specific objections within seven (7) days of service of the objections.

(c) **Taxation of Costs**.

Where no objections are filed, the clerk will tax the costs and allow such items as are taxable under law. Where objections are filed, a hearing may be scheduled at the discretion of the clerk to review the bill of costs and the objections to it. Costs taxed by the clerk will be included in the judgment or decree.

(d) **Judicial Review.**

Taxation of costs by the clerk is subject to review by the court when, under Fed. R. Civ. P. 54(d), a motion for review is filed within seven (7) days of the entry on the docket of the clerk's action.

(e) **Attorneys' Fees**.

Attorneys' fees will not be taxed as costs. Motions for attorneys' fees will be reviewed by the court and awarded only upon order of the court.

(f) **Procedures and Requirements for Motions for Attorneys' Fees**.

Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorneys' fees authorized by law must be filed and served within fourteen (14) days after (i) entry of a judgment or (ii) an appeals court remand that modifies or imposes a fee award. Such motion must conform to the provisions DUCivR 7-1 of these rules. The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.

See DUCivR 54-1 for provisions regarding orders, judgments, and findings of fact and conclusions of law.

DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA

(a) <u>Summary Judgment Motions and Memoranda; Length and Filing Times</u>.

A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction. Filing times and length of memoranda are governed by DUCivR 7-1.

(b) <u>Motion; Elements and Undisputed Material Facts; and Background Facts</u>.

A motion for summary judgment must include the following sections:

(1) An introduction summarizing why summary judgment should be granted;

(2) A section entitled "Statement of Elements and Undisputed Material Facts" that contains the following:

(A) Each legal element required to prevail on the motion;

(B) Citation to legal authority supporting each stated element (without argument); [8]

(C) Under each element, a concise statement of the material facts necessary to meet that element as to which the moving party contends no genuine issue exists. Only those facts that entitle the moving party to judgment as a matter of law should be included in this section. Each asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

(3) An argument section explaining why under the applicable legal principles the asserted undisputed facts entitle the party to summary judgment.

The motion may, but need not, include a separate background section that contains a concise statement of facts, *whether disputed or not*, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the

[8] **ADVISORY COMMITTEE NOTE:** The purpose of the Statement of Elements and Undisputed Material Facts and the corresponding section in the memorandum in opposition to a motion for summary judgment is to distill the relevant legal issues and material facts for the court while reserving arguments for the respective argument sections of the motion and opposition memorandum.

introduction and may, but need not, cite to evidentiary support. The motion may also include a concise conclusion explaining the relief requested.

(c) **<u>Memorandum in Opposition; Response to Elements and Facts; and Background Facts.</u>**

A memorandum in opposition to a motion for summary judgment must include the following sections:

(1) An introduction summarizing why summary judgment should be denied;

(2) A section entitled "Response to Statement of Elements and Undisputed Material Facts" that contains the following:

(A) A concise response to each legal element stated by the moving party. If the non-moving party agrees with a stated element, state "agreed" for that element. If the party disagrees with a stated element, state what the party believes is the correct element and provide citation to legal authority supporting the party's contention (without argument). If the non-moving party agrees that any stated element has been met, so state.

(B) A response to each stated material fact. Under each element that a party disputes as having been met, restate each numbered paragraph from the statement of material facts provided in support of that element in the motion. If a fact is undisputed, so state. If a fact is disputed, so state and concisely describe and cite with particularity the evidence on which the non-moving party relies to dispute that fact (without legal argument).[9]

(C) A statement of any additional material facts, if applicable. If additional material facts are relevant to show that an element has not been met or that there is a genuine issue for trial, state each such fact separately in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

(D) A statement of additional elements and material facts, if applicable. If there are additional legal elements not stated by the moving party that the

[9] **ADVISORY COMMITTEE NOTE:** Parties who wish to raise evidentiary objections may do so pursuant to DUCivR 7-1(b)(1)(B) and Fed. R. Civ. P. 56(c)(2).

non-moving party contends preclude summary judgment, state each such element along with citation to legal authority that supports the element (without argument) and any additional material facts that create a genuine issue for trial on these elements. Each additional asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

(3) An argument section explaining why, under the applicable legal principles, summary judgment should be denied.

The opposition may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.

For the purpose of summary judgment, all material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the movant's statement of material facts will be deemed admitted unless specifically controverted by the statement of the opposing party identifying and citing to material facts of record meeting the requirements of Fed. R. Civ. P. 56.

(d) **Reply** .

The moving party may file a reply memorandum consistent with DUCivR 7-1. In the reply, a moving party may only cite additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it.

(e) **Citations of Supplemental Authority**.

When pertinent and significant authorities come to the attention of a party after the party's memorandum in support of or in opposition to a summary judgment motion has been filed, or after oral argument but before decision, a party may promptly file a notice 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 notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(f) **Supporting Exhibits to Memoranda**.

All evidence offered in support of or opposition to motions for summary judgment must be submitted in a separately filed appendix with a cover page index. The index must list each exhibit by number, include a description or title and, if the exhibit is a document, provide the source of the document. A responding party may object as provided in Fed. R. Civ. P. 56(c)(2). Upon the failure of any responding party to object, the court may assume for purposes of summary judgment only that the evidence proffered would be admissible at trial.

(g) **Failure to Respond**.

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

See DUCivR 7-1 for guidelines regarding motions and memoranda in general, and DUCivR 7-2 for guidelines on citing unpublished decisions.

DUCivR 58-1 JUDGMENT: FINAL JUDGMENT BASED UPON A WRITTEN INSTRUMENT

Unless otherwise ordered by the court, a final judgment based upon a written instrument must be accompanied by the original or certified copy of the instrument which must be filed as an exhibit in the case at the time judgment is entered. The instrument must be marked appropriately as having been merged into the judgment, must show the docket number of the action, and may be returned to the party filing the same upon order of the court only as in the case of other exhibits as provided for in DUCivR 83-5.

FED. R. CIV. P. 60
RELIEF FROM JUDGMENT OR ORDER

No corresponding local rule; however, see DUCivR 83-6 for stipulations requiring court approval.

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY 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 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 party must identify the deposit as such in a motion 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 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.

(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. 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 69-1 SUPPLEMENTAL PROCEEDINGS

(a) **Motion to Appear.**

Any party having a final judgment on which execution may issue may make a motion to have the judgment debtor or other person in possession of, or having information relating to, property or other assets that may be subject to execution or distraint appear in court

and answer concerning such property or assets. The moving party, on proper affidavit, may request that the debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the moving party's interest.

(b) **Hearing Before Magistrate Judge.**

A motion under section (a) of this rule will be presented to a magistrate judge and the matter calendared before the magistrate judge for hearing to require the debtor or other person to be examined. In any case in which the moving party seeks a restraint of the debtor's or other person's property, the magistrate judge will make findings and a report for the district judge with an order for restraint that the district judge may issue.

(c) **Failure to Appear.**

Should the debtor or other person fail to appear as directed, the magistrate judge may issue such process as is necessary and appropriate, including arrest, to bring the person before the court. If the conduct of the non-responding person is contemptuous, a proper reference will be made by the magistrate judge to the district judge to whom the matter has been assigned.

(d) **Fees and Expenses.**

The moving party must tender a witness fee and mileage or equivalent to any person, with the exception of the judgment debtor, who, under this rule, is required to appear in court.

DUCivR 71A-1 DEPOSITS IN THE COURT REGISTRY

Unless otherwise prohibited by statute, any party seeking to make a Fed. R. Civ. P. 71A(j) deposit in a property condemnation proceeding may do so without a court order by depositing the funds with the court, subject to the approval of the clerk of court. Unless otherwise stipulated by the parties, such funds will be deposited by the clerk of court into the U.S. Treasury, and any interest earned while the funds are so deposited will accrue to the United States. The parties may request, on written stipulation, that the clerk of court invest the funds in an interest-bearing account or instrument. Under DUCivR 67-1(d), the stipulation must specify the nature of the investment, and the parties must serve a copy of the stipulation personally upon the clerk of court or the chief deputy clerk.

DUCivR 72-1 MAGISTRATE JUDGE AUTHORITY

Magistrate judges in the District of Utah are authorized to perform the duties prescribed by 28 U.S.C. § 636 (a)(1) and (2), and they may exercise all the powers and duties conferred upon magistrate judges by statutes of the United States and the Federal Rules of Civil and Criminal Procedure.

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

(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. § 6331 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 11-001.

(b) **Authority Under Fed. R. Civ. P. 72(a)**.

On order of reference and under Fed. R. Civ. P. 72(a), magistrate judges are authorized to hear and determine any procedural motion, discovery motion, or other non-dispositive motion.

(c) **Authority Under Fed. R. Civ. P. 72(b)**.

On order of reference and under the provisions of Fed. R. Civ. P. 72(b), magistrate judges are authorized to prepare and submit to the district judge a report containing proposed findings of fact and recommendations for disposition of motions:

(1) for injunctive relief including temporary restraining orders and preliminary and permanent injunctions,

(2) for judgment on the pleadings;

(3) for summary judgment;

(4) to dismiss;

(5) under Fed. R. Civ. P. 12(b);

(6) for default judgments; and

(7) for judicial review of administrative agency decisions, including benefits under the Social Security Act, and awards or denials of licenses or similar privileges.

Magistrate judges may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority under this section.

(d) **Authority Under 42 U.S.C. § 1983.**

On an order of reference in prisoner cases filed under 42 U.S.C. § 1983, magistrate judges are authorized to:

(1) review prisoner suits for deprivation of civil rights arising out of conditions of confinement, issue preliminary orders as appropriate, conduct evidentiary hearings or other proceedings as appropriate, and prepare for submission to the court appropriate reports containing proposed findings of fact and recommendations for disposition of the matter;

(2) take depositions, gather evidence, and conduct pretrial conferences;

(3) conduct periodic reviews of proceedings to ensure compliance with prior orders of the court regarding conditions of confinement, and

(4) review prisoner correspondence.

(e) **Authority Under 28 U.S.C. §§ 2254 and 2255.**

On an order of reference in a case filed under 28 U.S.C. §§ 2254 and 2255, magistrate judges are authorized to perform any or all of the duties set forth in the Rules Governing Proceedings in the United States District Courts under §§ 2254 and 2255 of Title 28, United States Code, including issuing of preliminary orders, conducting evidentiary hearings or other proceedings as appropriate, and preparing for submission to the court a report of proposed findings of fact and recommendations for disposition of the petition.

(f) **Authority to Function as Special Master.**

In accordance with the provisions of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53, magistrate judges may be designated by the court to serve as special masters with consent of the parties.

(g) **Authority to Adjudicate Civil Cases.**

In accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, and on consent of the parties, magistrate judges may be authorized to adjudicate civil case proceedings, including the conduct of jury and non-jury trials and entry of a final judgment.

DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL DECISION

(a) **Stays of Magistrate Judge Orders.**

Pending a review of objections, motions for stay of magistrate judge orders shall be addressed initially to the magistrate judge who issued the order.

(b) **Ruling on Objections.**

Unless otherwise ordered by the assigned district judge, no response need be filed and no hearing will be held concerning an objection to a magistrate judge's order pursuant to Fed. R. Civ. P. 72(a) and 28 § 636 (b)(1)(A). The district judge may deny the objection by written order at any time, but may not grant it without first giving the opposing party an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is filed within 14 days after the objection is filed, the non-moving party shall submit to the judge a proposed order denying the objection.

DUCivR 77-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

(a) Office of Record.

The court's office of record is located in the United States Courthouse at 351 South West Temple St., Salt Lake City, Utah 84101.

(b) Hours and Days of Business.

Unless otherwise ordered by the court in unusual circumstances, the office of the clerk will be open to the public during posted business hours on all days except Saturdays, Sundays, and legal holidays as set forth below. Court hours and days of business are posted on the court's website at http://www.utd.uscourts.gov.

The following are holidays on which the court will be closed:

- New Year's Day, January 1
- Birthday of Martin Luther King, Jr. (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day, July 4
- Pioneer Day, July 24
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans' Day, November 11
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

(c) U.S. Courts Law Library.

The United States Courts Law Library in the United States Courthouse contains non-circulating legal reference books, periodicals, and related materials. Access to the library is available to the bar and the public when library staff are on duty during normal court business hours.

DUCivR 77-2 ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK OF COURT

(a) <u>Orders and Judgments</u>.

The clerk of court is authorized to grant and enter the following orders and judgments without direction by the court:

(1) orders specifically appointing a person to serve process under Fed. R. Civ. P. 4(c);

(2) orders extending once for fourteen (14) days the time within which to answer, reply, or otherwise plead to a complaint, crossclaim, or counterclaim if the time originally prescribed to plead has not expired;

(3) orders for the payment of money on consent of all parties interested therein;

(4) if the time originally prescribed has not expired, orders to which all parties stipulate in civil actions extending once for not more than thirty (30) days the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission, or to respond to motions;

(5) orders to which all parties stipulate dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66;

(6) entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1); and

(7) any other orders which, under Fed. R. Civ. P. 77(c), do not require leave or order of the court.

Any proposed order submitted to the clerk under this rule must be signed by the party or attorney submitting it and will be subject to the provisions of Fed. R. Civ. P. 11. In addition, with the exception of proposed orders for extensions of time, all other proposed orders under this rule are subject to the requirements of DUCivR 54-1. Any proposed order submitted to the clerk for an extension of time under subsections (2) or (4) of section (a) of this rule must state (i) the date when the time for the act sought to be extended is due; (ii) the specific date to which the allowable time for the act is to be extended; and (iii) that the time originally prescribed has not expired. Second and successive requests for extensions of time must be by motion and proposed order to the court and must include a statement of the unusual or exceptional circumstances that warrant the request for an additional extension. In addition to the requirements (i)

through (iii), above, such motions and proposed orders must specify the previous extensions granted.

(b) **Clerk's Action Reviewable.**

The actions of the clerk of court under this rule may be reviewed, suspended, altered, or rescinded by the court upon good cause shown.

DUCivR 79-1 ACCESS TO COURT RECORDS

(a) **Access to Public Court Records.**

(1) Access via Internet. Cases filed after May 2, 2005, are available for review electronically via the court's website at http://www.utd.uscourts.gov. To access an electronic case file, users must first register for Public Access to Court Electronic Records (PACER) at http://pacer.psc.uscourts.gov/register.html Lengthy exhibits, transcripts of court proceedings, and other supporting documents may be accessible only in paper format at the office of the clerk of court. Some cases filed prior to May 2, 2005, also may be accessible electronically through PACER. PACER users are subject to a modest per-page charge for case information that is downloaded.

(2) Access in the Office of the Clerk. The public records of the court are available for examination in the office of the clerk during the normal business hours and days specified in DUCivR 77-1. Paper files of cases filed prior to May 2, 2005 may not be removed from the clerk's office by members of the bar or the public. However, the clerk of court will make and furnish copies of official public court records upon request and upon payment of the prescribed fees.

(b) **Sealed or Impounded Records.**

Records or exhibits ordered sealed or impounded by the court are not public records within the meaning of this rule.

See DUCivR 5-2, Filing Cases and Documents Under Court Seal, and DUCivR 83-5, Custody and Disposition of Trial Exhibits.

(c) Search for Cases by the Clerk.

The office of the clerk is authorized to conduct searches of the most recent ten years of the master indices maintained by the clerk of court and to issue a certificate of such search. Pursuant to the fee schedule, the clerk will charge a fee, payable in advance, for each name for which a search is conducted.

DUCivR 81-1 SCOPE AND APPLICABILITY OF RULES

(a) Scope of Rules.

These rules apply in all civil proceedings conducted in the District of Utah.

(b) Relationship to Prior Rules; Actions Pending on Effective Date.

These rules supersede all previous rules promulgated by the United States District Court or any judge of this court. These rules govern all applicable proceedings brought in the United States District Court. They also apply to all proceedings pending at the time they take effect, except where, in the opinion of the court, their application is not feasible or would work injustice, in which event the former rules govern.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) Practice Before the Court.

Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

(b) Admission to the Bar of this Court.

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.

(2) Admissions Procedure.

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.

(B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of

this court in open court. The applicant(s) must be present at the time the motion is made.

(C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to sections (a) and (d) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

(D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States (and the constitution of the State of Utah;) that I will discharge the duties of attorney and counselor at law asan officer of (the courts of the State of Utah and) the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah."

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately if they have a change in name, e-mail address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

(c) Active Member Status Requirement.

Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in DUCivR 83-1.2.

(d) Admission Pro Hac Vice.

(1) Non-resident attorneys authorized by 28 U.S.C. § 517 to appear before this Court on behalf of the United States or its agencies must file a notice of appearance, which contains a statement acknowledging the attorney's obligation and agreement to abide by the Utah Rules of Professional Conduct and Civility as outlined in subsection (g) of this rule. First time filers in this District must also file an Electronic Case Filing Registration Form as an exhibit to the notice of appearance. This notice of appearance satisfies the rules for admission without further order from the Court unless an opposing party objects to the notice of appearance within 14 days of its filing. If an objection is filed, the attorney who filed the notice of appearance shall not file a response to the objection unless ordered to do so by this Court.

(2) Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia must be admitted pro hac vice upon completion and acknowledgment of the following in order to practice before this Court:

(a) Application and Fee. Applicants must complete and submit to the clerk an application form available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee, self-certification of good standing in the bar of the highest court of another state or the District of Columbia and the applicant's agreement to read and comply with the Utah Rules of Professional

Conduct and the Utah Standards of Professionalism and Civility.

(b) Motion for Admission. Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(c) Revocation of Pro Hac Vice Admission. Any judge of the court may revoke the admission of an attorney who has been admitted Pro Hac Vice for good cause shown, including but not limited to, violation of the rules of this court or failure to comply with court orders. The party opposing admission Pro Hac Vice must file an objection within 14 days of the motion or 14 days of an order granting a motion for admission Pro Hac Vice, whichever is later. If an objection is filed, the attorney who filed the Motion for Admission shall not file a response unless ordered to do so by this Court. An attorney admitted Pro Hac Vice may not continue to appear Pro Hac Vice without associated local counsel if the associated local counsel withdraws from the representation.

(e) Attorneys for the United States Residing in This District.

Attorneys representing the United States government or any agency or instrumentality thereof, including the Federal Public Defender's Office, and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing agencies of the government and resident assistant Federal Public Defenders will be given twelve (12) months from the date of their commission in which to take and pass the

Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorney" by the United States Attorney for the District of Utah or "Special Attorney" by the Attorney General of the United States, and (ii) are members in good standing of the highest court of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

(f) Pro Se Representation.

Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.

(g) Rules of Professional Conduct and Standards of Professionalism and Civility.

All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, appearing under 28 U.S.C. § 517, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court. The court adopts the Utah Standards of Professionalism and Civility to guide attorney conduct in cases and proceedings in this court.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

(a) General Requirement.

All attorneys admitted to the practice of law before this court must register with the clerk on or before the first day of July of each year following their admission. Each registrant must certify on the form provided by the clerk to:

(1) having read and being familiar with the District Court Rules of Practice, the Utah Rules of Professional Conduct, and the Utah Standards of Professionalism and Civility; and

(2) being a member in good standing of the Utah State Bar and the bar of this court.

(b) Categories of Membership.

All registrants for membership in the bar of this court must request on their annual registration form one of two categories of membership, as set forth below:

(1) Active Membership. All attorneys who practice in this court are required to maintain their membership in the court's bar in active status. Such status must be renewed annually and requires payment of a registration fee except where specifically exempted by this rule.

(2) Inactive Membership. Attorneys who wish to remain a member of the bar of the court but who have retired or no longer practice in this court may maintain their membership in inactive status by so notifying the clerk in writing. Attorneys filing such notice are be ineligible to practice in this court until reinstated to active status under such terms as the court may direct.

(3) Exemptions. Judges who are barred by law or rule from the practice of law are exempt from payment of the registration fee for active membership status.

(c) Non-Member Status.

Attorneys who are members but who wish to relinquish their membership status must notify the clerk in writing of their intent. Upon receiving such notification, the clerk will remove their names from the court's roll of attorneys.

(d) Failure to Register.

Attorneys who do not register with the court, who fail to pay the required fee on an annual basis, or who otherwise fail to notify the court of their intentions will receive notice via first class mail at their last-known address from the clerk of court that their right to practice in this court will be summarily suspended if they do not comply with the registration requirements within thirty (30) days of the mailing of such notice. Attorneys so suspended will be ineligible to practice in this court until their membership has been reinstated under such terms as the court may direct, including application and payment of

any delinquent registration fees and payment of such additional amount as the court may direct.

DUCivR 83-1.3 ATTORNEYS - APPEARANCES BY ATTORNEYS

(a) Attorney of Record.

The filing of any pleading, unless otherwise specified, will constitute an appearance by the person who signs such pleading, and such person will be considered counsel of record, provided the attorney has complied with the requirements of DUCivR 83-1.1, or party appearing pro se in that matter. If an attorney's appearance has not been established previously by the filing of papers in the action or proceeding, such attorney must file with the clerk a notice of appearance promptly upon undertaking the representation of any party or witness in any court or grand jury proceedings. The form of such notice must follow the example available on the court's website http://www.utd.uscourts.gov. An attorney of record will be deemed responsible in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution in the case.

(b) Limited Appearance.

(1) An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

(A) filing a pleading or other paper;

(B) acting as counsel for a specific motion;

(C) acting as counsel for a specific discovery procedure;

(D) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or

(E) any other purpose with leave of the court.

(2) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice.

The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(3) Any party may move to clarify the description of the purpose and scope of the limited appearance.

(4) A party on whose behalf an attorney enters a limited appearance will continue to receive notice of all filings with the Court and will remain responsible for all matters not specifically described in the Notice.

(5) An attorney who has entered a notice of limited appearance under this section shall file a notice with the Court informing the Court when the purpose and scope of the limited appearance have been fulfilled. Failure to do so will constitute the attorney's consent to continue such representation of the party on whose behalf the notice of limited appearance was filed.

(c) <u>Pro Se Representation</u>.

Individuals may represent themselves in the court. No corporation, association, partnership or other artificial entity may appear pro se but must be represented by an attorney who is admitted to practice in this court.

(d) <u>Appearance by Party</u>.

Whenever a party has appeared by an attorney, that party cannot appear or act thereafter in its own behalf in the action or take any steps therein unless an order of substitution first has been made by the court after notice to the attorney of each such party and to the opposing party. However, notwithstanding that such party has appeared or is represented by an attorney, at its discretion the court may hear a party in open court. The attorney who has appeared of record for any party must:

(1) represent such party in the action;

(2) be recognized by the court and by all parties to the action as having control of the client's case; and

(3) sign all papers that are to be signed on behalf of the client.

(e) <u>Notification of Clerk</u>.

In all cases, counsel and parties appearing pro se must notify the clerk's office immediately of any change in address, email address, or telephone number.

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) <u>Withdrawal Leaving a Party Without Representation</u>.

(1) No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except upon submission of:

(A) A Motion to Withdraw as Counsel in the form prescribed by the court that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no Notice of Substitution of Counsel has been filed, the client must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court, (iv) notice that pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties; and

(B) A proposed Order Granting Motion to Withdraw As Counsel in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(2) No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the Motion to Withdraw as Counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of

the trial date and will be prepared to proceed with trial; (ii) the application includes a certification signed by the moving attorney's client indicating that the party is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.

(3) Withdrawal may not be used to unduly prejudice the non-moving party by improperly delaying the litigation.

(b) **Withdrawal With and Without the Client's Consent.**

(1) **With Client's Consent**. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the motion.

(2) **Without Client's Consent**. Where the moving attorney has not obtained the written consent of the client, the motion must contain (i) certification that the client has been served with a copy of the motion to withdraw, (ii) a description of the status of the case including the dates and times of any scheduled court proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate, (iii) certification by the moving attorney that the client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw.

(c) **Procedure After Withdrawal.**

(1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until twenty-one (21) days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the twenty-one (21) day stay period.

(2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule.

(3) Within twenty-one (21) days after entry of the order, or within the time otherwise required by the court,

(A) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf.

(B) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

(4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended schedu ling order.

(5) An unrepresented party who fails to appear within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(d) <u>Substitution</u>.

Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a Notice of Substitution of Counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and, (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.

DUCivR-83-1.5 ATTORNEYS - DISCIPLINE OF ATTORNEYS

DUCivR 83-1.5.1 - General Provisions
DUCivR 83-1.5.2 - Reciprocal Discipline
DUCivR 83-1.5.3 - Criminal Conviction Discipline
DUCivR 83-1.5.4 - Referral by a Judicial Officer
DUCivR 83-1.5.5 - Attorney Misconduct Complaint
DUCivR 83-1.5.6 - Committee on the Conduct of Attorneys
DUCivR 83-1.5.7 - Evidentiary Hearing
DUCivR 83-1.5.8 - Reinstatement

DUCivR 83-1.5.1 ATTORNEYS - DISCIPLINARY ACTIONS - GENERAL PROVISIONS

(a) Standards of Professional Conduct.

All attorneys practicing before this court, either as members of the bar of this court by Pro Hac Vice admission, must comply with the rules of practice adopted by this court and with the Utah Rules of Professional Conduct as revised, amended, and interpreted by this court.

(b) Grounds for Discipline.

Any attorney who appears in this court or is a member of the bar of the court is subject to the disciplinary jurisdiction of the court. Disciplinary proceedings may be initiated in this court against an attorney who has been:

(1) disciplined by the Utah State Bar, the Tenth Circuit Court of Appeals, or other jurisdictions;

(2) convicted of a serious crime, which includes, without limitation, any felony or any misdemeanor which reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney;

(3) referred for discipline by a judicial officer of the court;

(4) the subject of an attorney misconduct complaint; or

(5) otherwise charged with violation of an ethical or professional standard of conduct.

(c) Disciplinary Panel.

The Chief Judge will designate three judges as the Disciplinary Panel (Panel) for the court. The Panel members may be active or senior district judges, magistrate judges, or bankruptcy court judges. The Chief Judge will designate one Panel member as Panel Chair. If a Panel member must recuse from a disciplinary matter, the remaining members have authority to proceed without the participation of that judge, and one of them will act as Panel Chair. Further, the Chief Judge may appoint a judge to act as a pro tem member of the Panel.

(d) Disciplinary Committee.

The Panel must appoint five members of the court's bar to serve as a Committee on the Conduct of Attorneys and must designate one member to serve as Chair. The members

will serve staggered three-year terms and may be reappointed. Members will not be compensated but may be reimbursed for incidental expenses.

(e) **Clerk of Court.**

The clerk will receive attorney discipline complaints and referrals and maintain them in confidential files. If a public disciplinary order is entered, the clerk will transmit the notice thereof to any bar association to which the attorney may belong and to the American Bar Association's National Discipline Data Bank.

(f) **Confidentiality.**

If an attorney has been publicly disciplined by another jurisdiction or convicted of a serious crime as defined in (b) (2), the discipline file will be a public record. The file of other disciplinary matters will remain confidential until the Panel orders the file or parts of the file to be publicly available. All suspension and disbarment orders, including interim suspension orders, shall be distributed to the judges of the court by the clerk of court.

(g) **Waiver and Consent.**

Any attorney who is the subject of an ongoing disciplinary action may file a waiver with the clerk and consent to have discipline entered. An attorney may also, with the approval of the Panel, resign his or her membership in the bar of the court.

(h) **Interim Suspension.**

The Panel may order interim suspension of an attorney who has been convicted of a serious crime or is suspended or disbarred from the Utah State Bar or other jurisdictions pending final adjudication of disciplinary proceedings in this court. In disciplinary matters originating with a judicial referral or private complaint, the Panel may suspend the attorney during the disciplinary process if the attorney's ability to practice in the interim may pose a substantial threat of irreparable harm to the public.

(i) **Reinstatement from Interim Suspension.**

Any attorney under interim suspension for having been convicted of a serious crime as defined in (b) (2) may apply to the Panel for reinstatement upon the filing of a certificate demonstrating that the conviction has been reversed. This reinstatement will not, in and by itself, terminate the pending disciplinary proceeding.

(j) **<u>Participant Immunity</u>.**

Participants in disciplinary proceedings under these rules shall be entitled to the same protections for statements made in the course of the proceedings as participants in judicial proceedings. Committee members, neutral hearing examiner, investigators and attorneys who prosecute complaints shall be immune from suit for conduct committed in the course of their official duties including those undertaken in the investigatory stage. There is no immunity from civil suit for intentional misconduct.

DUCivR 83-1.5.2 RECIPROCAL DISCIPLINE

(a) **<u>Notice to the Court</u>.**

Any member of the bar of this court who has been disciplined by another jurisdiction must notify the clerk of that discipline by sending a copy of the disciplinary order to the clerk. The clerk may also receive notice of disciplinary action from the disciplining jurisdiction. The clerk will assign the matter a disciplinary case number, review the order, review the attorney's membership status with the court, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

Pursuant to the provisions of DUCiv R 83-1.1 (b)(1) the Chair of the Disciplinary Panel will enter an automatic order of disbarment or suspension upon receipt of notice of an order disbarring or suspending an attorney from the Utah State Bar. The attorney may challenge the discipline by filing a motion and demonstrating good cause as to why the suspension or disbarment should not be imposed in this court.

(b) **<u>Procedure</u>.**

In cases in which the discipline is imposed by another jurisdiction, the Panel Chair will issue an order to show cause why reciprocal discipline should not be imposed by this court. The clerk must serve the order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel will review any response received from the attorney. The Panel may then

(1) impose different or no discipline;

(2) impose reciprocal discipline;

(3) refer the matter to the Committee for review and recommendations; or

(4) set the matter for hearing before a neutral hearing examiner, a judicial officer designated by the Chief Judge upon recommendation by the Panel, or before the Panel itself.

Similar discipline will be imposed unless the attorney clearly demonstrates or the Panel finds that the other jurisdiction's procedure constituted a deprivation of due process, the evidence establishing the misconduct warrants different discipline, or the imposition of discipline would result in a grave injustice.

DUCivR 83-1.5.3 CRIMINAL CONVICTION DISCIPLINE

(a) <u>Notice to the Court</u>.

Any member of the bar of this court must notify the clerk of any conviction of a serious crime as defined by DUCivR 83-1.5.1 (b) (2). The clerk may also receive notice of conviction from other sources. The clerk will assign the matter a disciplinary case number, review the conviction, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

(b) <u>Procedure</u>.

The Panel Chair will issue an order to show cause why discipline should not be imposed by this court and a notice that the attorney will be subject to interim suspension under DUCivR 83-1.5.1 (h). The clerk must serve the order to show cause and notice of suspension on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond to the order to show cause.

At the conclusion of the response period for the order to show cause, the Panel shall review any response received from the attorney. The Panel may then

(1) impose no discipline;

(2) impose discipline;

(3) refer the matter to the Committee for review and recommendations; or

(4) set the matter for hearing before the Panel, a neutral hearing examiner or a judicial officer designated by the Chief Judge upon recommendation by the Panel.

(c) <u>Sanctions</u>.

The Panel may impose sanctions which include but are not limited to

(1) disbarment;

(2) suspension;

(3) imposition of conditions for continuing to practice law in this jurisdiction;

(4) mandatory continuing legal education;

(5) public reprimand;

(6) private reprimand; or

(7) other discipline as deemed appropriate.

DUCivR 83-1.5.4 REFERRAL BY A JUDICIAL OFFICER

(a) <u>Referral</u>.

A judicial officer may make a referral in writing to the Panel recommending that an attorney be subject to discipline. The referral must be forwarded to the clerk who will assign a disciplinary case number and refer the matter to the Panel chair for review and action pursuant to section (b) of this rule.

(b) <u>Procedure</u>.

The Panel Chair must review the referral with other Panel members. With the concurrence of the Panel members, the Panel Chair must issue an order to show cause why discipline should not be imposed by this court. The clerk will serve the judicial referral and order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel will review any response received from the attorney. The Panel may then

(1) dismiss the referral;

(2) impose discipline;

(3) refer the matter to the Committee for review and recommendations; or

(4) set the matter for hearing before the Panel, a neutral hearing examiner or a judicial officer designated by the Chief Judge upon recommendation by the Panel.

(c) <u>Sanctions</u>.

The Panel may impose sanctions which include but are not limited to

(1) disbarment;

(2) suspension;

(3) imposition of conditions for continuing to practice law in this jurisdiction;

(4) mandatory continuing legal education;

(5) public reprimand;

(6) private reprimand; or

(7) other discipline as deemed appropriate.

DUCivR 83-1.5.5 ATTORNEY MISCONDUCT COMPLAINT

(a) <u>Complaint</u>.

Any person with a complaint based upon conduct directly related to practice in this court against an attorney who is either a member of the bar of this court or has been admitted to practice Pro Hac Vice, must sign and submit the complaint in writing and under oath. The complaint must be in the form prescribed by the court and available from the clerk. The clerk will review the complaint, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

(b) <u>Procedure</u>.

The Panel will review the complaint and determine whether the complaint should be served or should be dismissed as frivolous or for asserting a claim which is not disciplinary in nature. If the complaint is dismissed, the complainant will be informed by mail. The Panel must issue an order to show cause for other complaints. The clerk will serve the complaint and order to show cause on the attorney by certified mail, return

receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel must review any response received from the attorney. The Panel may then:

(1) dismiss the complaint;

(2) impose discipline;

(3) refer the matter to the Committee for review and recommendations; or

(4) set the matter for hearing before the Panel, neutral hearing examiner or a judge designated by the Chief Judge upon recommendation by the Panel.

(c) <u>Sanctions</u>.

The Panel may impose sanctions which include but are not limited to

(1) disbarment;

(2) suspension;

(3) imposition of conditions for continuing to practice law in this jurisdiction;

(4) mandatory continuing legal education;

(5) public reprimand;

(6) private reprimand; or

(7) other discipline as deemed appropriate.

DUCivR 83-1.5.6 COMMITTEE ON THE CONDUCT OF ATTORNEYS

(a) <u>Procedure</u>.

The Committee Chair will review the original complaint or referral and the response of the attorney. The Chair may then refer the matter to one or more Committee members to investigate and prepare a recommendation to the Committee as a whole.

(b) <u>Investigation</u>.

The Committee may request further information from the clerk concerning court records. In addition, the Committee or one or more members of the Committee may contact the complaining party and/or the attorney for further information and can interview persons with information regarding the alleged misconduct.

(c) **Report and Recommendation.**

The Committee must review the recommendation of the investigating member(s) and prepare a report and recommendation to the Panel which may contain recommendations for possible sanctions or for dismissal. The report and recommendation will contain the factual basis for the misconduct allegation and the response of the attorney and other information which has been considered by the Committee. A majority of Committee members must sign the report and recommendation. A member or members of the Committee in the minority may file a dissenting report. The Committee Chair will transmit the report and recommendation and any dissenting reports to the clerk who will serve the attorney and the complaining party, and will also transmit a copy of the report and recommendation and any dissenting report to the Panel. The attorney may file objections to the report and recommendation within ten (10) days of the date of service.

(d) **Recommendation for Evidentiary Hearing.**

If the Committee finds that the facts underlying the complaint or referral are in dispute, or that there are questions of law about the application of the ethical standards to the conduct alleged, the Committee may include a recommendation that the matter be referred by the Panel for an evidentiary hearing.

DUCivR 83-1.5.7 EVIDENTIARY HEARING

(a) **Appointment of Hearing Examiner.**

If the Panel determines that the matter will be best resolved by appointment of a neutral hearing examiner to conduct an evidentiary hearing, the Panel will select a member of the court's bar to conduct the hearing.

(b) **Appointment of a Judicial Officer.**

If the Panel determines that the matter will be best resolved by the appointment of a judicial officer to conduct a hearing, the Panel will consult with the Chief Judge who will appoint a judicial officer to conduct the hearing.

(c) **Appointment of Prosecutor.**

The panel may appoint a member of the Committee or another attorney to prosecute the complaint at the hearing.

(d) **Panel Hearing.**

The Panel may, in an appropriate case, conduct the hearing sitting as a three-judge panel. If the Panel conducts the hearing, the Panel will issue a final order at the conclusion of the hearing.

(e) **Hearing Process.**

All hearings will be recorded verbatim by electronic or non-electronic means. The examiner or judicial officer may issue subpoenas for witnesses, production of documents, or other tangible things. Testimony will be taken under oath. Disciplinary proceedings are administrative rather than judicial in nature. Accordingly, the Federal Rules of Evidence will not be applicable in the evidentiary hearing unless otherwise ordered by the hearing examiner or appointed judicial officer. Evidentiary rules that are commonly accepted in administrative hearings will apply. The burden of establishing the charges of misconduct will rest with the prosecutor, who must prove the misconduct by a preponderance of the evidence.

(f) **Report and Recommendation.**

After the hearing has been concluded, the examiner or judicial officer shall prepare a report including findings of fact and conclusions of law with a recommendation regarding the imposition of sanctions to the clerk who will serve it on the attorney and the complainant and transmit it to the Panel. The attorney may file objections to the report and recommendation within ten (10) days of the date of service. The Panel will enter the final order.

(g) **Fees and Costs.**

The Panel may authorize payment of attorney's fees and expenses to an investigator or prosecutor or to an appointed hearing examiner. The Panel may tax the costs of disciplinary proceedings under these rules to the attorney subject to discipline or the attorney petitioning for reinstatement. All costs and reimbursements will be deposited in the Court's Bar Fund. Other expenses of disciplinary proceeds may be paid by the clerk from the Court's Bar Fund when approved by the Panel or Chief Judge.

DUCivR 83-1.5.8 REINSTATEMENT

(a) Reinstatement from Reciprocal Discipline Matters.

Reinstatement in this court is not automatic upon reinstatement in the court which initially imposed the discipline. An attorney who has been disciplined under DUCivR 83-1.5.2 may petition the court for reinstatement after having been reinstated by the initial disciplining jurisdiction.

(b) Reinstatement from Other Disciplinary Orders.

An attorney who has been suspended by this court for a period of less than three months must be reinstated upon notification to the clerk that the suspension period is complete. An attorney who has been suspended for a period longer than three months must file a petition for reinstatement and may not practice until the petition has been reviewed and approved by the Panel. An attorney who has been disbarred may not petition for reinstatement until five years after the effective date of the disbarment.

(c) Contents of the Petition.

An attorney seeking reinstatement must demonstrate to the Panel that the conditions for reinstatement have been fully satisfied and that the resumption of the attorney's practice will not be detrimental to the integrity of the bar of this court, the interests of justice, or the public.

(d) Procedure.

The Panel will review petitions for reinstatement. If the Panel needs further information, it may refer the petition to the Committee for further investigation. The Committee will proceed as provided in DUCivR 83-1.5.6.

DUCivR 83-1.6 ATTORNEYS - STUDENT PRACTICE RULE

(a) Entry of Appearance on Written Consent of Client and Supervising Attorney.

An eligible law student may enter an appearance in any civil or criminal case before this court provided that the client on whose behalf the student is appearing and the supervising attorney have filed a written consent with the clerk.

(b) Law Student Eligibility.

An eligible law student must:

(1) Be enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent graduate of such a school awaiting either (i) the first sitting of the bar examination, or (ii) the result of such examination;

(2) Have completed legal studies amounting to at least four semesters, or the equivalent if the course work schedule is on some basis other than semesters;

(3) Be certified in writing by an official of the law school designated by the dean as having the good character, competent legal ability, and necessary qualifications to provide the legal representation permitted by this rule;

(4) Have a working knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of Professional Conduct, and the District Court Rules of Practice; and

(5) Neither ask for nor receive any kind of compensation or remuneration from any client on whose behalf the student renders services; however, the student may be paid a set salary or hourly wage by an employing lawyer, law firm, government office, or other entity providing legal services to the extent that the employer does not charge or otherwise seek reimbursement from the client for the services rendered by the student.

(c) Responsibilities of Supervising Attorney.

A supervising attorney must:

(1) Be a member in good standing of the bar of this court;

(2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided on the court's website http://www.utd.uscourts.gov;

(3) File with the clerk a consent agreement to supervise the student in the form provided on the court's website;

(4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided on the court's website;

(5) Assume personal professional responsibility for the quality of the student's work and be available for consultation with represented clients;

(6) Guide and assist the student in all activities undertaken by the student and permitted by this rule to the extent required for the proper practical training of the student and the protection of the client;

(7) Sign all pleadings or other documents filed with the court; the student may also co-sign such documents;

(8) Be present with the student at all court appearances, depositions, and at other proceedings in which testimony is taken;

(9) Be prepared to promptly supplement any of the student's oral or written work as necessary to ensure proper representation of the client.

(d) <u>Scope of Representation</u>.

Unless otherwise directed by a judge or magistrate judge, an eligible law student, supervised in accordance with this rule, may:

(1) Appear as assistant counsel in civil and criminal proceedings on behalf of any client, including federal, state or local government bodies provided that the written consent of the client and the supervising attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.

(2) Appear as assistant counsel when depositions are taken on behalf of any client in civil and criminal cases when written consent of the client and the supervising attorney and the dean's certification previously have been filed with the clerk.

(3) Co-sign motions, applications, answers, briefs, and other documents in civil and criminal cases after their review, approval and signature by the supervising attorney.

(e) <u>Law School Certification</u>.

Certification of a student by the law school official must be (i) in the form provided on the court’s website, (ii) filed with the clerk, and (iii) unless sooner withdrawn, remain in effect for twelve (12) months unless otherwise ordered by a judge or magistrate judge. Certification will automatically terminate if the student (i) does not take the first scheduled bar examination following graduation, (ii) fails to achieve a passing grade in

the bar examination, or (iii) is otherwise admitted to the bar of this court. Certification of a student may be withdrawn for good cause by the designated law school official.

DUCivR 83-2 ASSIGNMENT AND TRANSFER OF CIVIL CASES

Supervision of the random assignment of civil cases to the judges of the court is the responsibility of the chief judge.

(a) Random Selection Case Assignment System.

All case assignments are randomly assigned by an automated case assignment system approved by the judges of the court and managed by the clerk under the direction of the chief judge.

(b) Judicial Recusal.

In the event of a judicial refusal, another judge will be assigned to the case through the random selection case assignment system described in subsection (a) of this rule. If all judges recuse themselves, the chief judge of the court will request the chief judge of the Tenth Circuit Court of Appeals to assign a judge from another district within the circuit to hear the matter.

(c) Emergency Matters.

In the event an assigned judge is ill, out of town, or otherwise unavailable to consider an urgent matter, application for consideration may be made to any available judge of the court. For purposes of efficiency and coordination, requests for emergency judicial action should be directed to and coordinated through the clerk.

(d) Post-Conviction Relief.

Whenever a second or subsequent case seeking post-conviction or other relief by petition for writ of habeas corpus is filed by the same petitioner involving the same conviction as in the first case, it will be assigned to the same judge to whom the original case was assigned.

(e) Section 2255 Motions.

Under Rule 4 of the Rules Governing Section 2255 Proceedings, all motions under 28 U.S.C. § 2255 will be assigned to the judge to whom the original criminal proceeding was assigned.

(f) **Multiple Matters Arising Out of a Single Bankruptcy Case.**

In the event multiple matters arising out of a single bankruptcy case are filed in this court (whether appeals under DUCivR 83-7.9; referrals of indirect criminal contempt of court under DUCivR 83-7.7; withdrawals of the reference of cases, proceedings or contested matters under DUCivR 83-7.4; or otherwise), the first matter will be randomly assigned to a judge of this court, as set forth in subsection (a) above. Thereafter, any and all subsequent matters arising out of the same bankruptcy case will be assigned to the judge of this court to whom the first matter was assigned.

(g) **Transfer of Related Case[10].**

Whenever two or more related cases are pending before different judges of this court, any party to the later-filed case may file a motion and proposed order to transfer the case to the judge with the lower-numbered case. To determine whether the case should be transferred, the court may consider the following factors:

(1) Whether the cases arise from the same or a closely related transaction or event;

(2) Whether the cases involve substantially the same parties or property;

(3) Whether the cases involve the same patent, trademark, or copyright;

(4) Whether the cases call for a determination of the same or substantially related questions of law and fact;

(5) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges; and

(6) Whether there is risk of inconsistent verdicts or outcomes;

(7) Whether the motion has been brought for an improper purpose.

The motion to transfer shall be filed in the lower-numbered related case, and a notice of the motion shall be filed in case in which transfer is sought. While the motion shall be decided by the judge assigned to the lower-numbered case, judges assigned to the cases will confer about the appropriateness of the requested transfer. The transfer of cases may also be addressed sua sponte by the court.

[10] If a case is transferred to another judge with a similar case, the transferred case will remain a separate case with its own docket and scheduling order. If consolidation–rather than transfer–is sought, please see DUCivR 42-1.

DUCivR 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The taking of photographs; the making of mechanical, electronic, digital, or similar records in the courtroom and areas immediately adjacent thereto in connection with any judicial proceeding, including recesses; and the broadcasting of judicial proceedings by radio, television, telephone, or other devices or means, are prohibited. In addition, the advertising or posting of audio, video, or other forms of recordings or transcripts of court proceedings made in violation of this rule on any Internet website, blog, or other means of transmitting such information via electronic means is prohibited. Violation of these prohibitions is sanctionable by the court.

The court, however, may permit the broadcasting, televising, recording, or photographing of investiture, ceremonial, naturalization, and other similar proceedings. The court also may permit the use of electronic, digital, mechanical, or photographic means for the presentation of evidence, for perpetuation of a record, or as otherwise may be authorized by the court.

DUCivR 83-4 COURT SECURITY

(a) Application of the Rule.

This rule applies to any building and environs occupied or used by the United States Courts in the District of Utah. It is in effect at all times that district judges, magistrate judges, or other court personnel are present, whether or not court is in session.

(b) Persons Subject to Search.

All persons seeking entry to a building occupied or used by the United States Courts in the District of Utah are subject to search by the United States marshal, deputy United States marshals, or other court security officers designated by the marshal or the court. All persons other than authorized officers and employees of the United States Government are required, upon entering the United States Courthouse or other place of holding court in the District of Utah, to submit their persons and belongings in their possession at the time of entry to electronic detection equipment under the supervision of the marshal.

(c) Weapons.

With the exception of weapons carried by the United States marshal, deputy United States marshals, court security officers, or federal protective officers, no weapons other

than exhibits will be permitted in any place of holding court in the District of Utah; no other person may bring a weapon other than an exhibit into any place of holding court except as specifically permitted by this rule. The carrying of mechanical, chemical, and other weapons into any place of holding court in the District of Utah is subject to the provisions of the Weapons Policy for the District of Utah as set forth by the Court Security Committee and enforced by the United States marshal. The Weapons Policy is available for review on the court's website http://www.utd.uscourts.gov.

(d) Safety.

The court may require that any firearm, other mechanical or chemical weapon, or potentially explosive device intended for introduction as an exhibit first be presented to the United States marshal's office for a safety check prior to its being brought into any courtroom.

DUCivR 83-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

(a) Prior to Trial.

(1) Marking Exhibits. Prior to trial, each party must mark all the exhibits it intends to introduce during trial by utilizing exhibit labels in the format prescribed by the clerk of court. Electronic labels are allowed. Plaintiffs must use consecutive numbers; defendants must use consecutive letters. If the number or nature of the exhibits makes standard marking impracticable, the court may prescribe an alternate system and include instructions in the pretrial order.

(2) Preparation for Trial. After completion of discovery and prior to the final pretrial conference, counsel for each party must (i) prepare and serve on opposing counsel a list that identifies and briefly describes all marked exhibits to be offered at trial; and (ii) afford opposing counsel opportunity to examine the listed exhibits. Said exhibits also must be listed in the final pretrial order. Exhibits are part of the public record and personal information should be redacted pursuant FRCiv P 5.2 and DUCiv R 5.2-1.

(b) During Trial.

(1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.

(2) Custody of the Parties. Unless the court otherwise orders, all other exhibits admitted into evidence during trial will be retained in the custody of the party offering them. Such exhibits will include, but not be limited to, the following types of bulky or sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(c) After Trial.

(1) Exhibits in the Custody of the Clerk. Where the clerk of court does take custody of exhibits under subsection (b)(1) of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken, which receipt will be filed in the case.

(2) Removal from Evidence. Parties are to remove all exhibits in the custody of the clerk of court within fourteen (14) days after the mandate of the final reviewing court is filed or, if no appeal is filed, upon the expiration of the time for appeal. Parties failing to comply with this rule will be notified by the clerk to remove their exhibits and sign a receipt for them. Upon their failure to do so within fourteen (14) days of notification by the clerk, the clerk may destroy or otherwise dispose of the exhibits as the clerk deems appropriate.

(3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in subsection (b)(2) of this rule will retain custody of them and be responsible to the court for preserving them in their

condition as of the time admitted, until any appeal is resolved or the time for appeal has expired.

(4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, will make available any or all original exhibits in its possession, or true copies thereof, to enable such other party to prepare the record on appeal.

(5) Exhibits in Appeals. When a notice of appeal is filed, each party will prepare and submit to the clerk of this court a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who have custody of exhibits so listed are charged with the responsibility for their safekeeping and transportation if required to the court of appeals. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk of this court will remain in the custody of the respective party, such party will be responsible for forwarding the same to the clerk of the court of appeals on request.

DUCivR 83-6 STIPULATIONS: PROCEDURAL REQUIREMENT

No stipulation between the parties modifying a prior order of the court or affecting the course or conduct of any civil proceeding will be effective until approved by the court.

DUCivR 83-7.1 BANKRUPTCY - ORDER OF REFERENCE OF BANKRUPTCY MATTERS TO BANKRUPTCY JUDGES

Under 28 U.S.C. § 157(a), unless a rule or order of this court expressly provides otherwise, any and all cases under Title 11 and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for the District of Utah for consideration and resolution consistent with the law. This reference applies to all pending bankruptcy cases and proceedings except those currently before the district court and to all bankruptcy cases and proceedings hereafter filed in the District of Utah.

DUCivR 83-7.2 BANKRUPTCY - REMOVAL OF CLAIMS OR ACTIONS RELATED TO BANKRUPTCY CASES

Pursuant to Fed. R. Bank. P. 9027 and DUCivR 83-7.1, a notice of removal under 28 U.S.C. § 1452(a) shall be filed with the clerk of the bankruptcy court.

DUCivR 83-7.3 BANKRUPTCY - TRANSFER OF PERSONAL INJURY TORT AND WRONGFUL DEATH CLAIMS TO THE DISTRICT COURT

Personal injury tort and wrongful death claims referred to the bankruptcy court under DUCivR 83-7.1 shall be transferred to the District Court when required under 28 U.S.C. § l57(b)(5) pursuant to an order of the bankruptcy court on the court's own motion or on the motion of a party filed at any time in accordance with the procedures set forth in DUCivR 83.7-4.

DUCivR 83-7.4 BANKRUPTCY - WITHDRAWAL OF THE REFERENCE OF BANKRUPTCY CASES, PROCEEDINGS AND CONTESTED MATTERS

(a) <u>Motion to Withdraw the Reference</u>.

A person seeking to withdraw a case, adversary proceeding or contested matter which has been referred to the bankruptcy court under 28 U.S.C. § 157 (a) and DUCivR83-7.1 must file in the bankruptcy court the following documents:

(1) a motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) and Fed. R. Bank. P. 5011 (the "Withdrawal Motion");

(2) an ex parte application seeking an order of the bankruptcy court transmitting such motion to the district court; and

(3) a proposed order approving the application and authorizing the transmittal of the motion to the district court (the "Transmittal Order").

(b) <u>Grounds for Withdrawal of the Reference</u>.

A Withdrawal Motion must certify that:

(1) Withdrawal of the reference is mandatory under 28 U.S.C. § 157(b)(5) because the proceeding is a personal injury tort or a wrongful death claim;

(2) Withdrawal of the reference is mandatory under 28 U.S.C. § 157(d) because resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce;

(3) Withdrawal of the reference is appropriate because cause exists under 28 U.S.C. § 157(d). The alleged cause must be specified.

(c) Time for Making a Withdrawal Motion.

(1) Cases. A Withdrawal Motion seeking to withdraw the reference of a case may be made at any time.

(2) Adversary Proceedings. An original plaintiff seeking to withdraw the reference of an adversary proceeding must file a Withdrawal Motion within twenty-one (21) days after the proceeding is commenced. An original defendant, intervenor, or an added party, seeking to withdraw the reference of an adversary proceeding, must file a Withdrawal Motion within twenty-one (21) days after entering an appearance in the adversary proceeding. In adversary proceedings that have been removed to the bankruptcy court under 28 U.S.C. § 1452, a removing party seeking to withdraw the reference must file a Withdrawal Motion within twenty-one (21) days after filing the notice of removal; and other parties must file a Withdrawal Motion within twenty-one (21) days after service of notice of removal.

(3) Contested Matters. In contested matters, the person initiating the contested matter must file a Withdrawal Motion simultaneously with, but separate from, the motion or application initiating the contested matter. Any other person seeking to withdraw the reference of a contested matter must file a Withdrawal Motion simultaneously with the filing of its initial response to the motion or application initiating the contested matter.

(d) Transmittal of Withdrawal Motion to District Court and Opening of Miscellaneous Action.

(1) Transmittal. Upon the bankruptcy court's entry of a Transmittal Order, the Withdrawal Motion together with the Transmittal Order shall be transmitted to the

district court, and notice of the transmittal shall be noted on the bankruptcy court's docket in the case or proceeding.

(2) Opening of Miscellaneous Action. Upon transmittal, the district court clerk shall open a miscellaneous action. In the miscellaneous action, the party who filed the Withdrawal Motion shall be designated as the Petitioner, and all parties opposing the Withdrawal Motion shall be designated as Respondents. Upon transmittal of the Withdrawal Motion to the district court, all filings related to the Withdrawal Motion, including memoranda in opposition to the Withdrawal Motion and memoranda in reply thereto, shall be made in the district court miscellaneous action and shall be governed by these rules of practice.

(e) Procedure Upon Granting of Withdrawal Motion as to a Proceeding or Contested Matter.

In the event a Withdrawal Motion is granted by the district court with respect to a proceeding or contested matter, the applicable proceeding or contested matter shall be transferred to the district court in accordance with this rule.

(1) Conversion of Miscellaneous Action to Civil Action. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall convert the pending miscellaneous action into a civil action, and shall change the caption of the action, such that the title of each party in the civil action is consistent with its title in the bankruptcy court prior to transfer to the district court (*e.g*. plaintiff/defendant; debtor/creditor; movant/respondent, as applicable). The district court clerk shall note on the docket of the civil action that the applicable proceeding or contested matter has been transferred to the district court from the bankruptcy court. Such notation shall also identify the bankruptcy court number of the applicable proceeding which has been transferred from the bankruptcy court; or in the event of a transfer of a contested matter, the notation shall identify the bankruptcy court number of the case from which the contested matter has been transferred.

(2) Notation on Bankruptcy Court Docket. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall transmit a copy of such order to the bankruptcy court for filing in the applicable bankruptcy case or proceeding. Upon such transmittal, the clerk of the bankruptcy court shall note on the

bankruptcy court docket that the applicable adversary proceeding or contested matter has been transferred to the district court. Such notation shall also identify the district court civil number of the transferred proceeding or contested matter.

(3) Transfer to District Court. Upon the entry of an order granting a Withdrawal Motion, the applicable proceeding or contested matter shall be deemed transferred to the district court, and all subsequent filings therein shall be made in the district court civil action, bearing the appropriate district court caption and civil number. Upon transfer to the district court, the transferred proceeding or contested matter shall be governed in all respects by these local rules of practice; except that, unless the district court orders otherwise, all existing deadlines pending at the time of transfer shall remain in effect.

(4) Refiling of Pending Motions. If there is any pending motion in the transferred proceeding or contested matter which has not been ruled upon by the bankruptcy court prior to the time of transfer to the district court, the party who initially filed the motion shall file the same motion in the district court civil action, if it desires the district court to enter a ruling with respect to such motion. Each refiled motion shall include a cover sheet, bearing the appropriate district court caption and civil number, which identifies by name, date, and bankruptcy court docket number, every memoranda and affidavit filed in support of, and in opposition to, the motion prior to the time of transfer to the district court. The refiling of pending motions under this rule is for the administrative convenience of the district court, and shall not affect any deadlines with respect to filing memoranda in response to the motion, or filing memoranda in reply thereto.

(f) Procedure Upon Granting of Withdrawal Motion as to a Case.

In the event a Withdrawal Motion is granted by the district court with respect to a case, the district court shall enter an appropriate order governing the process for the transfer of the case from the bankruptcy court to the district court.

DUCivR 83-7.5 BANKRUPTCY - DETERMINATION OF PROCEEDINGS AS "NON-CORE"

A particular proceeding will be determined to be "non-core" under 28 U.S.C. § 157(b) only if a bankruptcy judge so determines sua sponte or rules on a motion of a party filed under 28 U.S.C. § 157(b)(3) within the time periods fixed by DUCivR 83-7.4. A determination that a related proceeding is "non-core" must be in accordance with 28 U.S.C. § 157(b). Non-core proceedings heard pursuant to 28 U.S.C. § 157 (c)(1), shall be governed by Fed. R. Bank. P. 9033.

DUCivR 83-7.6 BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE

Under Fed. R. Civ. P. 83 and Fed. R. Bank. P. 9029, the district court authorizes the bankruptcy court to adopt rules of practice not inconsistent with Title 11 and Title 28 of the United States Code, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the District Court Rules of Practice of the United States District Court for the District of Utah.

Such rules of practice will (i) be subject to approval, ratification, or modification by the district court and, (ii) upon such approval, ratification, or modification, be promulgated and applied uniformly by each of the bankruptcy court judges in this district.

DUCivR 83-7.7 BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT

Under 28 U.S.C. § 157(e), the district court authorizes and directs the bankruptcy judges to conduct jury trials in all proceedings in which a party is entitled to trial by jury and a jury is timely demanded, except when prohibited by applicable law. Fed. R. Civ. P. 47-51 and the applicable District Court Rules of Practice will apply to the conduct of a jury trial by a bankruptcy judge.

DUCivR 83-7.8 BANKRUPTCY - INDIRECT CRIMINAL CONTEMPT OF BANKRUPTCY COURT

Bankruptcy judges may not exercise powers of criminal contempt except when such conduct is committed in the presence of the court. If a bankruptcy judge has reasonable grounds for belief that there has been a commission of any act or conduct deemed to constitute criminal contempt not committed in the presence of the court, the bankruptcy judge may certify forthwith such facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this rule an order requiring such person to appear before a judge of that court upon a day certain to show cause why such person should not be adjudged in contempt by reason of the facts so certified. A judge of the district court, thereupon, in a summary manner will hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, may punish such person in the manner and to the same extent as for an equivalent contempt committed before a judge of the district court.

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, effective December 1, 2014 (the "BAP Rules"): 8003-1, 8003-2(b), 8003-2(c); 8003-3, 8007-1, 8009-1, 8009-2, 8009-3, 8012-1, 8013-1(a), 8013-1(b), 8013-1(c), 8014-1, 8015-1, 8022-1, 8024-3, 8026-1, and 8026-4. 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 8024-3, 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) <u>Transmission of the Record Under Fed. R. Bank. P. 8010 and Opening of Miscellaneous Case.</u>

(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:

(i) the bankruptcy court docket entries in the case and the adversary proceeding, if applicable;

(ii) the notice of appeal and the statement of election;

(iii) any motion to extend time to file the notice of appeal and the order disposing of the motion;

(iv) the bankruptcy court's judgment or order being appealed and any written findings and conclusions or opinion of the bankruptcy court; and

(v) 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:

(i) any documents transmitted by the bankruptcy court clerk to the bankruptcy appellate panel clerk, and

(ii) 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. 8010.

(d) <u>Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 8011</u>.

(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.

(i) Form. The appendix must be separate from the brief.

(ii) Table of Contents. The appendix must be paginated and must include a table of contents.

(iii) 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.

(iv) Transcripts. The appendix must contain all transcripts, or portions of transcripts, necessary for the Court's review.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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, one (1) courtesy copy of any brief and appendix must be provided to the Court upon electronic filing. The courtesy copy 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.

DUCivR 86-1 EFFECTIVE DATE

These rules are effective December 1, 2016.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

LOCAL PATENT RULES

PREAMBLE

These Local Patent Rules provide a standard structure for patent cases that will permit greater predictability and planning for the court and the litigants. These Rules also anticipate and address many of the procedural issues that commonly arise in patent cases. The court's intention is to eliminate the need for litigants and judges to address separately in each case procedural issues that tend to recur in the vast majority of patent cases.

The Rules require, along with a party's disclosures under Federal Rule of Civil Procedure 26(a)(1), meaningful disclosure of each party's contentions and support for allegations in the pleadings. Complaints and counterclaims in most patent cases are worded in a bare-bones fashion, necessitating discovery to flesh out the basis for each party's contentions. The Rules require the parties to provide the particulars behind allegations of infringement, non-infringement, and invalidity at an early date. Because Federal Rule of Civil Procedure 11 requires a party to have factual and legal support for allegations in its pleadings, early disclosure of the basis for each party's allegations will impose no unfair hardship and will benefit all parties by enabling a focus on the contested issues at an early stage of the case. The Rules' supplementation of the requirements of Rule 26(a)(1) and other Federal Rules is also appropriate due to the various ways in which patent litigation differs from most other civil litigation, including its factual complexity; the routine assertion of counterclaims; the need for the court to construe, and thus for the parties to identify, disputed language in patent claims; and the variety of ways in which a patent may be infringed or invalid.

The initial disclosures required by the Rules are not intended to confine a party to the contentions it makes at the outset of the case. It is not unusual for a party in a patent case to learn additional grounds for claims of infringement, non-infringement, and invalidity as the case progresses. After a reasonable period for fact discovery, however, each party must provide a final statement of its contentions on relevant issues, which the party may thereafter amend only "upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment." LPR 3.4.

The Rules also provide a standardized structure for claim construction proceedings, requiring the parties to identify and exchange position statements regarding disputed claim language before presenting disputes to the court. The Rules contemplate that claim construction will be done, in most cases, toward the end of fact discovery. The committee of lawyers and judges that drafted and proposed the Rules considered placing claim construction at both earlier and later spots in the standard schedule. The decision to place claim construction near the end of fact discovery is premised on the determination that claim construction is more likely to be a meaningful process that deals with the truly significant disputed claim terms if the parties have had sufficient time, via the discovery process, to ascertain what claim terms really matter and why and can identify (as the Rules require) which are outcome determinative. The Rules' placement of claim construction near the end of fact discovery does not preclude the parties from proposing or the court from requiring an earlier claim construction in a particular case. This may be appropriate in, for example, a case in which it is apparent at an early stage that the outcome will turn on one claim term or a small number of terms that can be identified without a significant amount of fact discovery.

1. SCOPE OF RULES

LPR 1.1 APPLICATION AND CONSTRUCTION

These Local Patent Rules ("LPR") apply to all cases filed in or transferred to this District after their effective date in which a party makes a claim of infringement, non-infringement, invalidity, or unenforceability of a utility patent. The court may apply all or part of the LPR to any case already pending on the effective date of the LPR. The court may sua sponte or upon motion modify the obligations and deadlines of the LPR based on the circumstances of any particular case when it will advance the just, speedy, and inexpensive determination of the action. If a party files a motion that raises claim construction issues prior to the claim construction proceedings provided for in Section 4 of these Patent Rules, the court may defer ruling on the motion until after entry of the claim construction ruling.

LPR 1.2 INITIAL ATTORNEY PLANNING CONFERENCE AND SCHEDULING ORDERS

The parties shall hold their conference pursuant to Fed. R. Civ. P. 26(f) no later than 35 (thirty-five) days after the filing of the first answer. The parties must discuss and address those

matters found in the form scheduling order located on the court's website http://www.utd.uscourts.gov. A completed proposed version of the scheduling order is to be presented to the court no later than seven (7) days after the Rule 26(f) conference unless the court otherwise directs. No later than fourteen (14) days after entry of the claim construction ruling, the parties must file a motion for proposed scheduling order governing the remaining pretrial obligations. A party may request the court enter a separate scheduling order for all non-patent causes of action.

LPR 1.3 FACT DISCOVERY

(a) The parties shall commence fact discovery upon the date for the Initial Attorney Planning Conference under LPR 1.2 and shall complete it twenty-eight (28) days after the date for exchange of claim terms and phrases under LPR 4.1.

(b) No later than fourteen (14) days after entry of the claim construction ruling a party may move to reopen fact discovery. In support of the motion, the moving party shall explain why the claim construction ruling or disclosure of intent to rely on opinions of counsel necessitates further discovery and identify the scope of such discovery.

(c) Discovery Concerning Opinions of Counsel:

(1) A party shall disclose its intent to rely on advice of counsel and the following information to all other parties no later than seven (7) days after entry of the claim construction ruling:

a. All written opinions of counsel and a summary of oral opinions (including the date, the attorney, and recipient) upon which the party will rely;

b. All information provided to the attorney in connection with the advice;

c. All written attorney work product developed in preparing the opinion that the attorney disclosed to the client; and

d. Identification of the date, sender, and recipient of all written and oral communications with the attorney or law firm concerning the subject matter of the advice by counsel.

(2) The substance of a claim of reliance on advice of counsel offered in defense to a charge of willful infringement, and other information within

the scope of a waiver of the attorney-client privilege based upon disclosure of such advice, is not subject to discovery until seven (7) days after entry of the claim construction ruling.

(3) After advice of counsel information becomes discoverable under LPR 1.3(b), a party claiming willful infringement may take the deposition of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.

(4) This Rule does not address whether materials other than those listed in LPR 1.3(c) are subject to discovery or within the scope of any waiver of the attorney-client privilege.

LPR 1.4 CONFIDENTIALITY

DUCivR 26-2 shall govern confidentiality in patent cases. Any party may move the court to modify the Protective Order provided for by DUCivR 26-2 for good cause. The filing of such a motion does not affect the requirement for, or timing of, any of the disclosures required by these Patent Rules.

LPR 1.5 CERTIFICATION OF DISCLOSURES

All disclosures made pursuant to LPR must be dated and signed by counsel of record (or by the party if unrepresented by counsel) and are subject to the requirements of Rules 11 and 26(g), and the sanctions available under Rule 37 of the Federal Rules of Civil Procedure.

LPR 1.6 ADMISSIBILITY OF DISCLOSURES

The contentions provided for in LPR 2.3 and 2.4 are inadmissible as evidence on the merits absent a showing that the disclosures were made in bad faith.

Comment

The purpose of the initial disclosures pursuant to LPR 2.3 – 2.5 is to identify the likely issues in the case, and to enable the parties to focus and narrow their discovery requests. Permitting use of the initial disclosures as evidence on the merits would defeat this purpose. A party may make reference to the initial disclosures for any other appropriate purpose.

LPR 1.7 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE

Except as provided in this paragraph or otherwise ordered, a party may not object to a discovery

request or decline to provide information otherwise required to be disclosed pursuant to FRCivP 26(a)(1) because the discovery request or disclosure requirement is premature in light of or conflicts with these Patent Rules. A party may object to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.CivP.26(a)(1)) on the ground that they are premature under the timetable provided in these Patent Rules. Once parties have made disclosures as required by these Patent Rules, the parties may conduct further discovery on these subjects;

(a) requests for a party's claim construction position (LPR 4.1);

(b) requests to the patent claimant for a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality (LPR 2.3);

(c) requests to an accused infringer for a comparison of the asserted claims and the prior art (LPR 2.4-2.5);

(d) requests to an accused infringer for its non-infringement contentions (LPR 2.4); and

(e) discovery concerning opinions of counsel (LPR 1.3(c))

Federal Rule of Civil Procedure 26's requirements concerning supplementation of disclosure and discovery responses apply to all disclosures required under these Patent Rules. Federal Rule of Civil Procedure 37and the related local rules provide the process and consequences for partial or incomplete disclosures under these Patent Rules.

2. PATENT INITIAL DISCLOSURES

Comment

LPR 2.3 – 2.5 supplement the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to LPR 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties' disclosures must be meaningful – as opposed to boilerplate and non- evasive. These provisions should be construed accordingly.

LPR 2.1 ACCUSED INSTRUMENTALITY DISCLOSURES

No later than seven (7) days after the defendant files its answer or other response, a party claiming infringement shall disclose a list identifying each accused apparatus, product, device,

process, method, act, or other instrumentality ("Accused Instrumentality") of the opposing party of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process.

LPR 2.2 INITIAL DISCLOSURES

The plaintiff shall provide its initial disclosures under Fed.R.CivP.26(a)(1) ("Initial Disclosures") no later than twenty-one (21) days after the defendant files its answer or other response; provided, however, if defendant asserts a counterclaim for infringement of another patent, plaintiff's Initial Disclosures shall be due no later than twenty-one (21) days after the plaintiff files its answer or other response to that counterclaim. The defendant shall provide its Initial Disclosures no later than twenty-eight (28) days after the defendant files its answer or other response; provided, however, if defendant asserts a counterclaim for infringement of another patent, defendant's Initial Disclosures shall be due no later than twenty-eight (28) days after the plaintiff files its answer or other response to that counterclaim. As used in this Rule, the term "document" has the same meaning as in Fed.R.CivP.34(a):

(a) A party asserting a claim of patent infringement shall for each asserted patent make available for inspection and copying, or serve control-numbered copies, with its Initial Disclosures the following non-privileged information in the party's possession, custody or control:

(1) all documents concerning any disclosure, sale or transfer, or offer to sell or transfer, any item embodying, practicing or resulting from the practice of the claimed invention or portion of the invention prior to the date of application. Production of a document pursuant to this Rule is not an admission that the document evidences or is prior art under 35 U.S.C. § 102;

(2) all documents concerning the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application or a priority date otherwise identified, whichever is earlier;

(3) the file history from the U.S. Patent and Trademark Office for each patent on which a claim for priority is based;

(4) all documents concerning ownership of the patent rights by the party asserting patent infringement;

(5) all licenses; and

(6) the date from which it alleges damages, if claimed, began to accrue; or, if that date is not known, how the date should be determined.

(b) A party opposing a claim of patent infringement shall make available for inspection and copying, or serve control-numbered copies, with its Initial Disclosures the following non-privileged information in the party's possession, custody or control:

(1) documents or things sufficient to show the operation and construction of all aspects or elements of each Accused Instrumentality identified with specificity in the pleading or Accused Instrumentality Disclosures of the party asserting patent infringement;

(2) a copy of each item of prior art of which the party is aware and upon which the party intends to rely that allegedly anticipates each asserted patent and its related claims or renders them obvious or, if a copy is unavailable, a description sufficient to identify the prior art and its relevant details;

(3) the Accused Instrumentality; and

(4) an estimate for the relevant time frame of the quantity of each Accused Instrumentality sold and the gross sales revenue.

LPR 2.3 INITIAL INFRINGEMENT CONTENTIONS

A party claiming patent infringement must serve on all parties "Initial Infringement Contentions" containing the following information no later than thirty-five (35) days after the defendant's Initial Disclosure under LPR 2.2:

(a) identification of each claim of each asserted patent that is allegedly infringed by the opposing party, including for each claim the applicable statutory subsection of 35 U.S.C. § 271;

(b) separately for each asserted claim, identification of each Accused

Instrumentality of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) whether each element of each asserted claim is claimed to be present in the Accused Instrumentality literally or under the doctrine of equivalents. For any claim under the doctrine of equivalents, the Initial Infringement Contentions must include an explanation of each function, way, and result that is alleged to be equivalent and why any differences are not substantial;

(e) for each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

(f) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

(g) the basis for any allegation of willful infringement; and

(h) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality embodies or practices the claimed invention, the party must identify, separately for each asserted patent, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether there has been marking pursuant to statute.

Without leave of court, a party claiming patent infringement must limit the allegedly infringed claims to ten (10) per asserted patent. If during discovery a party claiming patent infringement discovers an Accused Instrumentality that was not previously disclosed or known, the party

claiming patent infringement may, as required by the Federal Rules of Civil Procedure, supplement the infringed claims per an asserted patent by withdrawing an equal number of asserted claims and providing the information for the newly asserted claim required by this paragraph 2.3 within fourteen (14) days of discovery, except for good cause shown.

LPR 2.4 INITIAL NON-INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS

Each party opposing a claim of patent infringement or asserting invalidity or unenforceability shall serve upon all parties its "Initial Non-Infringement, Unenforceability and Invalidity Contentions" no later than fourteen (14) days after service of the Initial Infringement Contentions. Such Initial Contentions shall be as follows:

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 2.3(c), that identifies for each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

(1) identification, with particularity, of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent publication shall be identified by its number, country of origin, and date of issue. Every other prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(a)(1) (effective Mar. 16, 2013) or 35 U.S.C. §§ 102(a)–(b) & (g) (2012) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. A challenge to inventorship under 35 U.S.C. § 101 shall identify the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived;

(2) a statement of whether each item of prior art allegedly anticipates each

asserted claim or renders it obvious. If a combination of items of prior art allegedly makes a claim obvious, each such combination, and the reasons to combine such items must be identified;

(3) a chart identifying specifically where, in each alleged item of prior art, each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(4) a detailed statement of any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(b) or lack of enablement or lack of written description under 35 U.S.C. § 112(a).

(c) Unenforceability contentions shall identify the acts allegedly supporting and all bases for the assertion of unenforceability.

Without leave of court, a party asserting invalidity must limit prior art references to twelve (12) per asserted patent.

LPR 2.5 DOCUMENT PRODUCTION ACCOMPANYING INITIAL INVALIDITY CONTENTIONS

With the Initial Non-Infringement, Unenforceability and Invalidity Contentions under LPR 2.3, the party opposing a claim of patent infringement or asserting invalidity or unenforceability shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

(a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 2.4 chart; and

(b) a copy of any additional items of prior art identified pursuant to LPR 2.3, including for foreign art any translation in the party's possession, custody, or control that does not appear in the file history of the asserted patent(s).

LPR 2.6 DISCLOSURE REQUIREMENT IN PATENT CASES INITIATED BY COMPLAINT FOR DECLARATORY JUDGMENT

In a case initiated by a complaint for declaratory judgment in which a party files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 2.1 and 2.3 shall not apply unless a party makes a claim for patent infringement. If no claim of infringement is made, the party seeking a declaratory judgment must for each declaration for relief being sought comply with LPR 2.4 and 2.5 no later than forty-nine (49) days after the defendant's Initial Disclosures.

3. FINAL CONTENTIONS

LPR 3.1 FINAL INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS

A party claiming patent infringement must serve on all parties "Final Infringement Contentions" containing the information required by LPR 2.3 (a)–(h) no later than twenty-one (21) weeks after the due date for service of Initial Infringement Contentions. Each party asserting invalidity or unenforceability of a patent claim shall serve on all other parties, within fourteen(14) days after the Final Infringement Contentions are due, "Final Unenforceability and Invalidity Contentions" containing the information required by LPR 2.4 (b) and (c). Final Infringement Contentions may rely on no more than eight(8) asserted claims, from the set of previously-identified asserted claims, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties. Final Unenforceability and Invalidity Contentions may rely on no more than ten (10) prior art references, from the set of previously-identified prior art references, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties.

LPR 3.2 FINAL NON-INFRINGEMENT CONTENTIONS

Each party asserting non-infringement of a patent claim shall serve on all other parties "Final Non-infringement Contentions" no later than twenty-eight (28) days after service of the Final Infringement Contentions, containing the information called for in LPR 2.4(a).

LPR 3.3 DOCUMENT PRODUCTION ACCOMPANYING FINAL INVALIDITY CONTENTIONS

With the Final Invalidity Contentions, the party asserting invalidity of any patent claim shall produce or make available for inspection and copying: a copy or sample of all prior art identified

pursuant to LPR 3.1, to the extent not previously produced, that does not appear in the file history of the patent(s) at issue. If any such item is not in English, an English translation of the portion(s) relied upon must be produced. The translated portion of the non-English prior art must be sufficient to place in context the particular matter upon which the party relies.

The producing party shall separately identify by control-number which documents correspond to each claim.

LPR 3.4 AMENDMENT OF FINAL CONTENTIONS

A party may amend its Final Infringement Contentions; or Final Non-infringement, or Unenforceability and Invalidity Contentions only by order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment. An example of a circumstance that may support a finding of good cause, absent undue prejudice to the non-moving party, includes a claim construction by the court different from that proposed by the party seeking amendment.

The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

LPR 3.5 FINAL DATE TO SEEK STAY

Absent exceptional circumstances, no party may file a motion to stay the lawsuit pending reexamination or other post-grant proceedings in the U.S. Patent and Trademark Office after the due date for service of the Final Non-infringement Contentions pursuant to LPR 3.2.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1 EXCHANGE OF PROPOSED CLAIM TERMS TO BE CONSTRUED ALONG WITH PROPOSED CONSTRUCTIONS

(a) No later than fourteen (14) days after service of the Final Contentions pursuant to LPR 3.1 and LPR 3.2, each party shall serve a list of (i) the claim terms and phrases the court should construe; (ii) proposed constructions; (iii) identification of any claim element that is governed by 35 U.S.C. § 112(f); and (iv) a description of the function of that element, and the structure(s), act(s), or material(s) corresponding to that element, identified by column and line number

of the asserted patent(s).

(b) No later than seven (7) days after the exchange of claim terms and phrases, the parties must meet and confer and agree upon no more than ten (10) terms or phrases to submit for construction by the court. No more than ten (10) terms or phrases may be presented to the court for construction absent prior leave of court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon ten (10) terms, then five (5) shall be allocated to all plaintiffs and five (5) to all defendants. For each term to be presented to the court, each party must certify in its Cross-Motion for Claim Construction whether a term construction in a party's favor may be dispositive of an issue and explain why.

Comment

In some cases, the parties may dispute the construction of more than ten terms. But because construction of outcome-determinative or otherwise significant claim terms may lead to settlement or entry of summary judgment, in the majority of cases the need to construe other claim terms of lesser importance may be obviated. The limitation to ten claim terms to be presented for construction is intended to require the parties to focus upon outcome-determinative or otherwise significant disputes.

LPR 4.2 CLAIM CONSTRUCTION BRIEFS

(a) No later than thirty-five (35) days after the exchange of terms set forth in LPR 4.1, the parties shall file simultaneous Cross-Motions for Claim Construction, which may not exceed twenty-five (25) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition.

(b) On the date for filing the Cross-Motions for Claim Construction, the parties shall file a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. The prosecution history must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing, and all parties must cite to the Joint Appendix when referencing the materials it

contains. Any party may file a separate appendix to its claim construction brief containing other supporting materials. It must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing.

(c) No later than twenty-eight (28) days after filing of the Cross-Motions for Claim Construction, the parties shall file simultaneous Responsive Claim Construction Briefs, which may not exceed twenty-five (25) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition. The brief shall also describe all objections to any extrinsic evidence identified in the Cross-Motions for Claim Construction.

(d) No reply or surreply briefs shall be filed unless requested by the court.

(e) The presence of multiple alleged infringers with different products or processes shall, in an appropriate case, constitute good cause for allowing additional pages in the Cross-Motions for Claim Construction or Responsive Claim Construction Briefs or for allowing separate briefing as to different alleged infringers.

(f) No later than seven (7) days after filing of the Responsive Claim Construction briefs, the parties shall file (1) a joint claim construction chart that sets forth each claim term and phrase addressed in the Cross-Motions for Claim Construction; each party's proposed construction, and (2) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing pursuant to LPR 4.3. The document shall also be submitted to the court in Word Perfect or MS Word format. The chart should include a series of columns listing the complete language of each disputed claim term, each party's proposed claim constructions in separate columns, a column for the court to enter its claim construction and a reference to where the dispute term appears in the asserted patent. "Agreed" entered in the column for the court's construction will indicate agreed claim constructions.

Comment

The committee opted for simultaneous claim construction briefs rather than consecutive

briefs, concluding that simultaneous briefing will allow all parties a better opportunity to explain their positions in the most expedient manner. Given the extensive disclosure required under these rules and the requirement to file the Joint Appendix with the Cross-Motions for Claim Construction, the committee believed all parties would have an understanding of each other's positions prior to briefing.

LPR 4.3 CLAIM CONSTRUCTION HEARING

Concurrent with the filing of the Responsive Claim Construction Briefs, a party shall file a Motion to Set Claim Construction Hearing. Either before or after the filing of Cross-Motions for Claim Construction, the court shall issue an order describing the schedule and procedures for a claim construction hearing. Any exhibits, including demonstrative exhibits, to be used at a claim construction hearing must be exchanged no later than seven (7) days before the hearing.

LPR 4.4 TUTORIAL

No later than fourteen (14) days after the filing of the Responsive Claim Construction Briefs, a party may submit to the court a tutorial summarizing and explaining the technology at issue either in writing or in presentation form such as PowerPoint not to exceed thirty (30) pages, or on DVD not to exceed thirty (30) minutes. The parties may request to provide a live tutorial to the court as part of its submission. No argument shall be permitted in the tutorial. The parties may not rely upon any statement made in the tutorial in other aspects of the litigation. If the court considers an early claim construction in connection with a dispositive motion for summary judgment, a party may submit or the court may require the tutorial to be submitted at that time.

5. EXPERT WITNESSES

LPR 5.1 DISCLOSURE OF EXPERTS AND EXPERT REPORTS

Unless the court orders otherwise,

(a) expert witness disclosures and depositions shall be governed by this Rule;

(b) no later than twenty-eight (28) days after entry of the claim construction ruling, each party shall make its initial expert witness disclosures required by Federal Rule of Civil Procedure 26 on issues for which it bears the burden of proof;

(c) no later than twenty-eight (28) days after the date for initial expert reports, each party shall make its rebuttal expert witness disclosures required by Federal Rule of Civil Procedure 26 on the issues for which the opposing party bears the

burden of proof.

(d) Expert Reports Generally:

(1) Every expert report shall begin with a succinct statement of the opinions the expert expects to give at trial.

(2) Unless leave of court is applied for and given, there shall be no expert testimony at trial on any opinion not fairly disclosed in that expert's report.

(3) Unless leave of court is applied for and given, an expert shall not use or refer to at trial any evidence, basis or grounds in support of the expert's opinion not disclosed in the expert's report, except as set forth below.

LPR 5.2 DEPOSITIONS OF EXPERTS

Depositions of expert witnesses shall be completed no later than thirty-five (35) days after exchange of expert rebuttal reports.

LPR 5.3 PRESUMPTION AGAINST SUPPLEMENTATION OF REPORTS

Amendments or supplementation to expert reports after the deadlines provided herein are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced. This rule does not preclude or excuse supplementation required by the Rules of Civil Procedure when there are changes in factual support or legal precedent necessitating such supplementation.

6. DISPOSITIVE MOTIONS

LPR 6.1 FINAL DAY FOR FILING DISPOSITIVE MOTIONS

All dispositive motions shall be filed no later than twenty-eight (28) days after the scheduled date for the end of expert discovery.

Comment

This Rule does not preclude a party from moving for summary judgment at an earlier stage of the case if circumstances warrant. It is up to the trial judge to determine whether to consider an "early" summary judgment motion. See also LPR 1.1 (judge may defer a motion raising claim construction issues until after claim construction hearing is held).

LPR 6.2 SUMMARY JUDGMENT

Whenever construction of a term may be dispositive of an issue, any motion for partial summary judgment on that issue must be filed at the same time the moving party files its Cross-Motion for Claim Construction. See LPR 4. All other dispositive motions shall be filed within the time provided in LPR 6.1. All motions for summary judgment in patent cases subject to these rules must comply with local rule DUCivR 56-1.

7. FINAL PRETRIAL CONFERENCE

LPR 7.1 NUMBER OF CLAIMS AND PRIOR ART REFERENCES TO BE PRESENTED TO THE FACT FINDER

In its final pretrial disclosures, a party asserting infringement shall reduce the number of asserted claims to a manageable subset of previously-identified asserted claims. As a general rule, the court considers a manageable number to be three (3) claims per patent, and ten (10) claims total if more than one patent is being asserted. Except upon a showing of good cause, including principles of proportionality applying to the need for pretrial discovery, a party opposing infringement shall not file a motion to limit the number of asserted claims until the later of resolution of dispositive motions or ninety (90) days prior to trial.

In its final pretrial disclosures, a party opposing infringement shall reduce the number of prior art references—and any combinations thereof—to be asserted in support of anticipation or obviousness theories to a manageable subset of previously identified prior art references. As a general rule, a manageable number of references per claim is no more than three (3) references. A party opposing infringement must also identify how these references will be used, i.e., as anticipatory or in combination, against each asserted claim. Absent extraordinary circumstances, a party asserting infringement shall not file a motion to limit the number of asserted prior art references until the later of resolution of dispositive motions or ninety (90) days prior to trial.

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DUCrimR 1-1 SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES

These rules apply in all criminal proceedings conducted in the District of Utah. These rules, as amended and with appendices, are made available as specified in DUCivR 1-1(a). Notice of amendments to these rules and opportunity to comment is governed by DUCivR 1-1(b). The relationship of these rules to rules previously promulgated by this court and the application of these rules to criminal proceedings pending at the time they take effect are governed by DUCivR 81-1(b).

DUCrimR 1-2 SANCTIONS FOR CRIMINAL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these criminal rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party.

DUCrimR 5-1 INITIAL APPEARANCE OF PERSONS UNDER ARREST

When the marshal receives custody of any person under arrest, whether charged in this district or elsewhere, the marshal must promptly inform the magistrate judge and the United States attorney's office. The magistrate judge will promptly schedule an appearance of the arrested person.

DUCrimR 5-2 PRETRIAL SERVICES REPORT

Whenever the United States requests the detention of a defendant, or where there is a likelihood that a defendant may be detained, the magistrate judge will request a pretrial services report on the defendant pursuant to 18 U.S.C. § 3154.

DUCrimR 6-1 RETURNS OF GRAND JURY INDICTMENTS

In accordance with Fed. R. Crim. P. 6(f), all grand jury indictments must be returned to a United States district or magistrate judge in open court. The indictments will be filed

immediately with the clerk of court, and the defendants will be scheduled to appear before the magistrate judge for arraignment.

DUCrimR 9-1 ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS

(a) Summons or Warrant Request Upon Indictment, Information, or Complaint.

When a complaint is filed under Fed. R. Crim. P. 4(a), a summons request may be made either orally or in writing. A summons must be issued upon the filing of an indictment or information unless the government (i) submits to the court a written request for a warrant or (ii) specifically requests no service of process. A warrant request must include a brief statement of the facts justifying the arrest of the defendant. A warrant may be issued on an information only if it is accompanied by a written probable cause statement given under oath.

(b) Warrant Upon Failure to Appear.

If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.

DUCrimR 11-1 PLEA AGREEMENTS

All plea agreements must be in writing and signed by counsel and the defendant. The plea agreement must be accompanied by a written stipulation of facts relevant to a plea of guilty which, if appropriate, includes the amount of restitution and a list of victims. If the agreement involves the dismissal of other charges or stipulates that a specific sentence is appropriate, the court will review and consider the presentence report before accepting or rejecting the plea agreement. All plea agreements shall be accompanied by a sealed document entitled "Plea Supplement." The Plea Supplement will be electronically filed under seal.

See DUCrimR 57-3 for filing and consolidation of cases involving plea bargains.

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) **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.

(f) **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.

(g) **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.

(h) **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; state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and

(iv) 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.

FED. R. CRIM. P. 13
TRIAL TOGETHER OF INDICTMENTS OR INFORMATION

No corresponding local rule; however, see DUCrimR 57-3 for consolidation of criminal cases.

DUCrimR 16-1 DISCOVERY

(a) <u>Rules Governing Discovery Motion Practice</u>.

Motions for discovery must be made in compliance with the Federal Rules of Criminal Procedure governing motion practice in criminal cases and with these District Court Rules of Practice. Specific discovery conditions may be stipulated to by the parties. Prior to filing discovery requests or motions with the court, counsel for the government and for the defendant must attempt to agree to a mutually acceptable pretrial exchange of discovery. If such an agreement is reached, counsel for both parties must sign and file with the court a joint discovery statement describing the terms and conditions of the agreement.

(b) <u>Alibi Witnesses and Mental Illness Experts</u>.

Alibi witness discovery is governed by Fed. R. Crim. P. 12.1 rather than by this criminal rule. Expert testimony discovery regarding a defendant's mental condition is governed by Fed. R. Crim. P. 12.2(b) rather than by this rule.

(c) <u>Motions Pursuant to Fed. R. Crim. P. 16</u>.

A discovery request under Fed. R. Crim. P. 16 must be made not later than the date set by the district or magistrate judge. The request must be in writing and state with particularity the material sought. Unless otherwise ordered by the court, the party obligated to disclose under Fed. R. Crim. P. 16 must comply promptly but not fewer than fourteen (14) days prior to trial. All exhibits subject to copying under Fed. R. Crim. P. 16 must be returned to the party from whom they were obtained prior to trial. As set forth in section (h) below, the party obligated to disclose under Fed. R. Crim. P. 16 must file a notice of compliance specifying with particularity how the request for discovery was satisfied. The government may not require the defendant or the defendant's attorney to withdraw or refrain from making a discovery request as a condition to an open-file policy. Where the government agrees to an open-file policy in a particular case, the government nevertheless must comply with the notification of compliance requirement set forth in section (h) below. Where the government agrees to an open-file policy, the defendant must provide reciprocal discovery as required by Fed. R. Crim. P. 16.

(d) **Motions Not Governed by Fed. R. Crim. P. 16.**

Motions for discovery, other than those under Fed. R. Crim. P. 16, must be in writing and specify with particularity the legal and factual basis for such discovery. Motions for discovery based upon constitutional or statutory grounds must specify with certainty the requested information and may be supported by affidavits filed with the motion. If the court grants a motion for discovery, or if the parties agree to production of the requested material, a notification of compliance with the discovery request, as set forth in section (h) below, must be made as soon as discovery is completed.

(e) **Jencks Act Discovery.**

Where the government agrees, under an open-file policy or otherwise, to provide pretrial discovery of witness statements, or where the court orders production of grand jury materials or witness statements in accordance with 18 U.S.C. § 3500 et seq., and Fed. R. Crim. P. 26.2, the defendant must provide reciprocal pretrial discovery of witness statements to the government.

(f) **Discovery Ordered by Pretrial Conference.**

The court may order discovery as it deems proper under Fed. R. Crim. P. 17.1. A notification of compliance, as set forth in section (h) below, with any such discovery order, must be made by the party required to make disclosure.

(g) **Motions for Protective or Modifying Orders.**

Motions for protective or modifying orders may be made after a request, motion, or order of discovery has been made. Such motions must be in writing and upon notice, and must specify with particularity the basis upon which relief is sought.

(h) **Notification of Compliance.**

The notification of compliance must specify with particularity the matter produced for discovery. If the notification of compliance does not accurately describe the materials or information produced, the opposing attorney must file with the court an objection stating in detail how the notification is inaccurate or incomplete to preserve the party's rights to object to the adequacy of discovery provided.

DUCrimR 16-2 DISCOVERY - SEARCH WARRANTS

The defendant may demand, at any time after the filing of the complaint, information, or indictment and prior to the date set for the filing of motions, that the government provide information as to whether any evidence obtained or derived from the execution of a search warrant will be used at trial against that defendant. Upon such demand, the government must provide to that defendant copies of all search warrants, affidavits, or records of warrants relevant to or connected with the prosecution of that defendant and must file copies of the same with the clerk of court. The government also must give written notice to that defendant of what evidence obtained or derived from the execution of any search warrant the government intends to offer at trial against that defendant. If the search warrants, affidavits, or records of warrants are under seal, the government must so state in response to a demand for disclosure. On said response, the defendant, in order to obtain disclosure of said documents, must file a motion to unseal the documents. Where the government objects to the unsealing, it must file an appropriate and timely response, and a hearing, if necessary, will be set for the court to hear the motion and objections. Where no objections to unsealing the documents are filed, the defendant must prepare an order for entry by the court.

DUCrimR 17-1 SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS AND APPOINTMENT OF EXPERTS

Unless otherwise directed by the court, the clerk will seal at the time of filing all ex parte motions and orders in Criminal Justice Act (CJA) cases for issuance of trial subpoenas, appointment of experts, authorization of travel, and other extra-ordinary expenses. Copies of such orders, when executed, will be served by the clerk only on the party that made the motion. The clerk will retain such motions and orders under seal until the case proceeds to trial or a judgment is issued.

See DUCrimR 16-1 for discovery ordered by pretrial conference and DUCrimR 44-1 for payment of services.

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 Fed.R.Crim.P. 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:

(1) The specific material sought, including an attachment of the draft subpoena;

(2) A proffer as to the likelihood of admissibility/materiality of the material sought;

(3) An explanation as to why the movant could not otherwise procure the material;

(4) An explanation as to why the movant cannot prepare the matter without the material in advance; and

(5) 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 she/he seeks material about a victim, the court will order the Victim Coordinator from the Office of the United States Attorney to provide the contact information for the victims(s) in the case. If the subpoena seeks 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.

DUCrimR 20-1 TRANSFERS UNDER FED. R. CRIM. P. 20

Where a criminal case against a named defendant who has not been sentenced is pending in this jurisdiction, and the United States attorney receives notification that a criminal case pending in another jurisdiction against the same defendant, is to be transferred to this jurisdiction under Fed. R. Crim. P. 20, the United States attorney must promptly notify the clerk of court. On receiving the case file from the transferring jurisdiction, the clerk will open a new case under the Rule 20 transfer and assign it to the judge to whom the pending case is assigned.

DUCrimR 20-2 TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING

When the United States attorney's office receives a request under Fed. R. Crim. P. 20 (b) from any defendant for transfer of a case for prosecution to the District of Utah, the United States attorney's office must promptly notify the clerk and process the transfer documents to ensure prompt transmission of the case to this court. When the clerk of court receives the file from the district of origin, the clerk will open a new case, assign a judge pursuant to DUCrimR 57-2, and deliver the file to the magistrate judge for processing. Thereafter, the magistrate judge will promptly calendar the case for arraignment to minimize delay. No scheduling order will be entered prior to the transfer of jurisdiction to this court.

FED. R. CRIM. P. 26.2
PRODUCTION OF WITNESS STATEMENTS

No corresponding local rule; however, see DUCrimR 16-1(e) for Jencks Act discovery.

DUCrimR 30-1 INSTRUCTIONS TO THE JURY

(a) Written Proposed Jury Instructions.

Unless the court otherwise orders, two (2) originals and one (1) copy of proposed jury instructions must be prepared, 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. One (1) original and one

(1) copy of each proposed instruction must (i) be numbered, (ii) indicate the identity of the party presenting the same, and (iii) contain citations of authority. A second original of each proposed instruction must be without number or citation. Individual instructions must embrace one (1) subject only, and the principle of law embraced in any instruction must not be repeated in subsequent instructions. 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.

(b) **Ruling on Requests.**

Prior to the argument of counsel, the court, in accordance with Fed. R. Crim. P. 30, will inform counsel of the court's proposed rulings in regard to requests for instructions. Counsel who believe the court has provided insufficient information under Fed. R. Crim. P. 30 should so inform the court on the record prior to final argument.

(c) **Objections or Exceptions to Final Instructions.**

The jury may be instructed orally or in writing as the court determines. As provided in Fed. R. Crim. P. 30, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by informing the court before the jury has retired, but out of the hearing of the jury. Such objections must (i) identify the objectionable parts of the charge or the refused instructions, and (ii) describe the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel may alert the court to any corrections to or explanations of the instructions that inadvertently may have been omitted.

DUCrimR 32-1 PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES

(a) **Restrictions on Disclosure of Sentencing Recommendations.**

Copies of the presentence report furnished under Fed. R. Crim. P. 32(b)(6) will exclude the probation officer's recommendation.

(b) **Position Statements.**

After disclosure of the presentence report to the parties, but no later than seven (7) days before sentencing, counsel for the parties must file, in accordance with the United States

Sentencing Commission Guidelines Manual, §§ 6A1.2 and 6A1.3, a pleading entitled "Position of Party with Respect to Sentencing Factors." The pleading must be accompanied by a written statement that the party has conferred in good faith with opposing counsel and with the probation officer in an attempt to resolve any disputed matters.

(c) **Disclosure of Presentence Report.**

Except as otherwise provided by Fed. R. Crim. P. 32(b)(6), presentence reports and confidential records maintained by the United States probation office will not be released except by order of the court.

(1) Disclosure to Correctional and Treatment Agencies. Probation reports, including the presentence report, may be forwarded routinely to the United States Sentencing Commission, the Federal Bureau of Prisons, federal contract facilities, the United States Parole Commission, courts of appeals and respective parties, as well as other United States probation offices in accordance with federal probation system policies and procedures. The probation office may prepare a summary of background material in cases for other correctional or treatment agencies and may review the appropriate file with professional staff members from those agencies upon receipt of a Consent to Release Information form signed by the defendant.

(2) Disclosure in 28 U.S.C. § 2255 Matters. Such reports may be reviewed by the court and authorized court personnel in consideration of matters under 28 U.S.C. § 2255.

DUCrimR 40-1 REMOVAL PROCEEDINGS

(a) **Notification of Removal.**

When the United States attorney's office and the marshal receive information that a person charged in the District of Utah has been ordered removed from another district either by warrant or by a release with directions to appear in this district, they must promptly notify the magistrate judge who will calendar the matter to ensure a timely appearance of the defendant before the magistrate judge.

(b) Delivery of Pertinent Documents.

When the clerk of court receives any letter or documents pertaining to the removal of a person to this district from any other district, the clerk will promptly deliver the same to the magistrate judge for proper processing with notice to the U.S. attorney's office of the removal. The clerk will obtain from the removing jurisdiction all documents pertinent to the release or detention of the defendant for the magistrate judge's use in making an appropriate determination on the pretrial detention or release of the defendant.

(c) Warrant of Removal.

When the magistrate judge issues a warrant of removal for any person charged in another district, or when the magistrate judge releases such a person with directions to appear in the district of origin, the magistrate judge will promptly deliver the docket sheet and all related documents pertaining to the matter to the clerk of court. The clerk will promptly forward the same to the district of origin.

FED. R. CRIM. P. 41
SEARCH AND SEIZURE

No corresponding local rule; however, see DUCrimR 12-1 for pretrial motions, responses, memoranda, and proposed orders.

DUCrimR 44-1 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Applicability.

This rule applies to any person:

(1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. § 5034), or a violation of probation;

(2) who is under arrest, when such representation is required by law;

(3) who is seeking collateral relief, as provided in subsection (b) of the CJA;

(4) who is in custody as a material witness (see subsection (g) of the CJA and 18 U.S.C. §§ 3144 and 3142(f));

(5) who is entitled to appointment of counsel in parole proceedings under 18 U.S.C. Chapter 311;

(6) whose mental condition is the subject of a hearing under 18 U.S.C. Chapter 313; or

(7) for whom the sixth amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which such person faces loss of liberty, any federal law requires the appointment of counsel.

(b) <u>Services Essential to a Proper Defense</u>.

The assigned district judge or magistrate judge may authorize an appointed attorney to incur reasonable expenses for the necessary services of an investigator, for a psychiatric examination of the defendant, or for other services essential to a proper defense. The cost of such additional services must not exceed the authorized statutory maximum. A request to incur such additional expense may be made ex parte to the assigned district judge or magistrate judge by motion or petition, together with an appropriate CJA form. In addition, an order must be issued and signed by the district or magistrate judge before any additional expenses are incurred. The assigned judge also may order that a subpoena be issued on behalf of an indigent defendant under DUCrimR 17-1.

(c) <u>Post-Trial Duties of Appointed Attorneys</u>.

The duties of an appointed attorney after the trial include the following:

(1) the attorney must inform the defendant of the right to appeal;

(2) if, after consultation with the attorney, the defendant desires to appeal, the attorney must file a notice of appeal, designate the appropriate portions of the record, make all arrangements necessary to order a transcript of needed testimony, and complete all other requirements necessary to perfect the appeal, including making and filing a docketing statement; and,

(3) if the attorney who represented the defendant at trial wishes to continue to represent the defendant in an appeal, the attorney must notify the clerk of the United States Court of Appeals for the Tenth Circuit and take proper steps to

obtain appointment from the court of appeals as counsel for the defendant on appeal.

(d) **Payment of Services.**

An attorney appointed to represent an indigent defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, is responsible for submitting, promptly after the attorney's duties have been terminated, properly completed vouchers and required support documentation on appropriate CJA forms for services rendered by the attorney or others. In cases involving extended services, the court, upon application, may recommend payment in excess of the statutory maximum. All vouchers seeking payments in excess of the statutory maximum must be accompanied by certified time sheets or other evidence setting forth in detail the time spent on the case. Appointments of attorneys for indigent defendants must be in accordance with the CJA plan for the District of Utah.

DUCrimR 44-2 CONSTRAINTS ON JOINT REPRESENTATION

(a) **Statement of Policy.**

An attorney, including attorneys who are associated in the practice of law, must avoid a conflict of interest in undertaking representation. In particular, an attorney must avoid a conflict of interest when representing joint defendants, targets of a grand jury investigation, or potential government witnesses in the same criminal matter, whether before or after any formal charges have been filed. Except as provided below, an attorney may not represent more than one defendant or target in the same criminal matter, nor may an attorney represent a defendant or target in a criminal matter if the attorney has represented or is representing individuals who are potential government witnesses in the same matter. An attorney may not represent joint defendants if the attorney, in making a calculation of any applicable sentencing guideline, may be required to contend for differing levels of culpability of the various persons represented.

(b) **Motion, Hearing, and Order.**

An attorney who intends to represent two or more persons in the same criminal matter with potential conflicts of interest must (i) conform to the provisions of Fed. R. Crim. P. 44(c), and (ii) file with the court a motion and proposed order permitting joint representation. The attorney must certify to the court that, after careful investigation of

potential conflicts of interest, it is clear that no actual conflict exists or is foreseeable. The attorney also must file with any motion for such an order a written certification by each person to be represented, giving informed consent to such joint representation and waiving the right to separate representation and, when applicable, waiving the attorney/client privilege. A response to the motion must be filed by the government within ten (10) days. At the subsequent hearing, each defendant, target, or potential government witness subject to or affected by joint representation must be in attendance. The court will deny joint representation where a conflict exists, even if consented to by a defendant, target, or potential government witness, if such representation would be contrary to the interest of justice in the case. The government, upon becoming aware of a potential conflict of interest in the representation of a criminal defendant, must promptly notify defendant's counsel of the potential conflict. If defendant's counsel does not respond and, if necessary, resolve the conflict after such notification, the government must file a motion to inform the court.

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TIME

No corresponding local rule; however, see DUCrimR 57-4 for time limitations and procedural interval processing of criminal cases.

DUCrimR 49-1 FILING OF PAPERS

The filing of pleadings and papers in criminal matters is governed by DUCivR 5-1(a) and (b).

DUCrimR 49-2 FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL

(a) Filing of Cases Under Seal.

On request of the United States attorney, made at the time a complaint or information is filed or a grand jury indictment is returned, that all or a portion of the documents in a

criminal case be sealed, the clerk will seal the case or documents unless the court otherwise directs. Sealed criminal cases will be listed on the clerk's case index as ***U.S.A. vs. Sealed Defendant***. Unless otherwise ordered by the court or, upon referral, a magistrate judge on a showing of good cause by the United States attorney or a defendant, sealed cases or documents will be unsealed when the last defendant appears in this district before the magistrate judge.

(b) **Filing of Documents Under Seal.**

On motion of any party and a showing of good cause, the court may order that all or a portion of the documents filed in a case be sealed. DUCivR 5-2 (c) and (d) governing the procedure for filing documents under seal and access to sealed documents apply in criminal cases. A district or magistrate judge may order that, in the interests of justice, critical documents in sensitive criminal matters be placed and remain under court seal for extended periods.

DUCrimR 49.1 REDACTING PERSONAL IDENTIFIERS

(a) **Redacting Personal Identifiers in Pleadings.**

The filer shall redact personal information in filings with the court, as required by Fed. R. Crim. P. 49.1. The court may order redaction of additional personal identifiers by motion and order in a specific case or as to a specific document or documents.

(b) **Redacting Personal Identifiers in Transcripts.**

Attorneys are responsible to review transcripts for personal information which is required to be redacted under Fed. R. Crim. P 49.1 and provide notice to the court reporter of the redactions which must be made before the transcript becomes available through PACER. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

(1) opening and closing statements made on the party's behalf;

(2) statements of the party;

(3) the testimony of any witnesses called by the party; and

(4) any other portion of the transcript as ordered by the court.

Redaction responsibilities apply to the attorneys even if the requestor of the transcript is the court or a member of the public including the media.

(c) **<u>Procedure for Reviewing and Redacting Transcripts</u>.**

Upon notice of the filing of a transcript with the court, the attorneys shall within seven (7) business days review the transcript and, if necessary, file a Notice of Intent to Request Redaction of the Transcript. Within twenty-one (21) calendar days of the filing of the transcript the attorneys shall file a notice of redactions to be made. The redactions shall be made by the court reporter within thirty-one (31) calendar days of the filing of the transcript and a redacted copy of the transcript promptly be filed with the clerk. Transcripts which do not require redactions and redacted transcripts shall be electronically available on PACER ninety (90) days after filing of the original transcript by the court reporter.

DUCrimR 53-1 COURTROOM PRACTICES AND PROTOCOL

The standards relating to attorney practices, protocol, and conduct when participating in civil proceedings are prescribed in DUCivR 43-1. The standards apply equally to all criminal proceedings in this district.

See DUCrimR 57-13 for cameras, recording devices, broadcasting, etc.

DUCrimR 55-1 ACCESS TO COURT RECORDS

Access to records related to criminal proceedings and maintained by the clerk is governed by DUCivR 79-1.

DUCrimR 56-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

For purposes of criminal matters, details regarding the office of record, U.S. Courts Library, days and hours of business are the same as those set forth in DUCivR 77-1.

DUCrimR 57-1 GENERAL FORMAT OF PAPERS

All papers in criminal matters submitted to the court must conform to the format requirements of DUCivR 10-1.

DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

Supervision of the random assignment of criminal cases to the judges of the court is the responsibility of the chief judge and will proceed as specified in DUCivR 83-2.

DUCrimR 57-3 ASSOCIATION AND FILING OF CRIMINAL CASES

(a) Pending Cases Involving Same Defendant.

Where there are two or more cases pending against the same defendant before two or more assigned judges, the United States, the defendant, or the court on its own motion, where appropriate, may move by written motion before either judge to assign the case to the judge with the low-number case.

(b) Filing of Information Related to New Charges Based on Plea Bargains.

When the United States, as part of a plea bargain, files an information against a defendant setting forth a charge unrelated in substance to a pending charge in a case before an assigned judge, the new information must be filed promptly with the clerk of court who will open a new criminal case and assign a judge pursuant to subsection (a) of this rule. Thereafter, the United States may make a motion for association or reassignment as set forth in section (c) of this rule.

(c) Filing Requirements.

A motion for association under Fed. R. Crim. P. 13, accompanied by a proposed order, may be filed in any one of the cases for which association is being proposed. A notice of filing the motion must be filed in each other case that the party seeks to have associated. Both the motion for association and the notice of filing must include the name and number of all cases for which association is being moved.

DUCrimR 57-4 CRIMINAL CASE PROCESSING

(a) General Authority.

Criminal cases will be processed in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, as amended, and the court's Revised Speedy Trial Plan.

(b) Arrest Date Information.

At the first court appearance of any person arrested for a federal offense not yet charged in an indictment or information, counsel for the United States will note for the record the date of the arrest. Such date will be recorded on the case docket and utilized by the clerk for initiating the Speedy Trial Act provisions with regard to time limitations and procedural intervals under 18 U.S.C. § 3161 (b). The clerk also will initiate such tracking provisions in matters involving persons served with a criminal summons, utilizing the service date of the summons.

DUCrimR 57-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

The custody and disposal of criminal trial exhibits and the attendant responsibilities of counsel are governed by DUCivR 83-5(a)(1), (b), and (c).

DUCrimR 57-6 SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS

In a criminal matter that is likely to be widely publicized, the court, during the investigation or at any other time, may issue an order governing extrajudicial statements by parties or witnesses which have a substantial likelihood of materially influencing a criminal proceeding or of preventing a fair trial or impeding the administration of justice. The court also may issue orders concerning the seating and conduct of spectators and news representatives, or the management and sequestration of jurors or witnesses, as the interests of justice may require.

DUCrimR 57-7 PUBLIC COMMUNICATIONS CONCERNING CRIMINAL MATTERS

(a) <u>Statement of Policy</u>.

A government or defense attorney or member of the same firm or office as the government or defense attorney may not disseminate by means of public communication, or means which could reasonably be anticipated to become public, any information, statement, or other matter which will have a substantial likelihood of preventing a fair trial or directly impeding the due administration of justice. Court supporting personnel, including marshals, deputy clerks, court reporters, probation officers, and their staffs or office personnel (whether employees or independent contractors) may not disclose to any person, without court authorization, any opinion or information relating to a pending investigation or prosecution that is not part of the public record, including information concerning grand jury proceedings or hearings and argument held outside the presence of the public.

(b) <u>Permissible Communications by Attorneys</u>.

A government or defense attorney may:

(1) quote without comment from the public record;

(2) inform the public of the general scope of an investigation or prosecution (including the name of the victim if not prohibited by law);

(3) warn the public of danger;

(4) solicit the help of the public in apprehending a suspect or fugitive or in procuring evidence;

(5) identify an accused by name, age, residence, occupation, and family status;

(6) announce the circumstances of arrest (including time, place, resistance, pursuit, use of weapons, arresting officer, length of investigation) and the seizure of physical evidence (including description of objects seized); and

(7) note the accused's denial of the charges and the accused's intent to seek an acquittal.

(c) <u>Impermissible Communications by Attorneys</u>.

(1) A government attorney must make no reference to an accused's prior criminal record, except to the extent that it may be relevant to an explanation of the

charges, confessions, or results of tests, or disclose any proposed evidence which the attorney knows or should know would not be admissible at trial, or render an opinion prior to or during trial as to the attorney's personal belief of the accused's guilt or innocence.

(2) A defense attorney must not (i) render any personal belief or opinion prior to or during trial as to accused's guilt or innocence, (ii) make any statement attributing the commission of the crime charged to a specific person other than the defendant, or (iii) disclose evidence that the attorney knows or should know would not be admissible at trial, which evidence could materially affect the fairness of the proceedings.

(d) <u>Sanctions for Rule Violation</u>.

Any attorney who violates the provisions of sections (a) or (c) of this rule will be subject to such sanctions as the court deems just and proper. Such discipline may be entered by the court sua sponte or upon motion of a party.

DUCrimR 57-8 COMMUNICATION WITH JURORS

Communications with jurors before, during, and after criminal trials are governed by DUCivR 47-2.

DUCrimR 57-9 MOTIONS FOR POST-CONVICTION RELIEF

(a) <u>Form of Motion</u>.

All motions for post-conviction relief under 28 U.S.C. § 2255 by a person in federal custody must be in writing and in substantially the standard form prescribed by the Rules Governing Section 2255 Proceedings for the United States District Courts, as set forth following 28 U.S.C. § 2255.

(b) <u>Duties of the Clerk</u>.

The clerk of court will make blank forms available upon request and without charge. Upon receiving any motion which does not substantially comply with the prescribed form, the clerk will file the motion but notify the applicant of the requirements of this

rule and provide to the applicant the correct form with instructions to complete and return it to the court.

(c) **Service Upon the Government.**

All motions filed under this rule must state with particularity the reasons for the post-conviction relief. A copy of the motion must be served upon the United States attorney's office. The district judge or magistrate judge will review the petition under Rule 4, Rules Governing Section 2255 Proceedings. If the motion warrants a response, an order will be made requiring the United States attorney to respond to the motion and a time for reply will be set. The order may direct the United States attorney to present appropriate documentation or information on the motion.

(d) **Assignment of Motion to Appropriate District Judge.**

The clerk of court, upon receipt of any motion filed under this rule, will notify the district judge who originally sentenced the applicant or, if that judge is unavailable, the clerk will so notify the judge otherwise assigned to the case.

(e) **Discretionary Assignment of Motion to Magistrate Judge.**

The court may refer the motion to a magistrate judge for investigation, recommendation, or final determination.

(f) **Discretionary Hearing.**

Unless otherwise ordered by the court upon motion by the applicant, no oral submission or hearing will be held upon the motion.

(g) **Authority for Proceedings.**

The proceedings on a motion under 28 U.S.C. § 2255 will be processed in conformity with statute and the Rules Governing Section 2255. The motion must state all bases for relief. Successive petitions may be denied under Rule 9, Rules Governing Section 2255 Proceedings.

DUCrimR 57-10 RELIEF FROM STATE DETAINER

No petition lodged or filed by a prisoner under the provisions of the Interstate Agreement on Detainers (18 U.S.C., Appendix III) for relief of any sort from the effect of a state detainer will be entertained unless (i) the petitioner, at least 180 days prior to the date of lodging or filing

a petition, transmits, through the warden or other official having petitioner's custody, to the prosecuting officer of the jurisdiction in which the case giving rise to the detainer is pending, and to the appropriate court, a written notice of the place of imprisonment and the petitioner's request for a final disposition of the indictment, information, or complaint upon which the detainer is based; and (ii) the petitioner has not been brought to trial on such indictment, information, or complaint.

DUCrimR 57-11 STIPULATIONS

No stipulation between the parties modifying a prior order of the court or affecting the course of conduct of any criminal proceeding will be effective until approved by the court.

DUCrimR 57-12 ATTORNEYS

All procedural matters relating to attorney admissions, registration, appearance and withdrawal, discipline and removal, and student practice in criminal matters are governed by the applicable civil rules, DUCivR 83-1.1 - 83-1.6.

DUCrimR 57-13 CAMERAS, RECORDING DEVICES, AND BROADCASTS

The use of cameras, recording devices, and broadcasts in criminal matters is governed by DUCivR 83-3.

DUCrimR 57-14 COURT SECURITY

Matters regarding court security during all criminal proceedings and otherwise are governed by DUCivR 83-4.

DUCrimR 57-15 MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES

(a) General Authority.

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

(1) accept criminal complaints, determine whether probable cause exists, and issue arrest warrants, summons, and search warrants, including those based on oral or telephonic testimony;

(2) administer oaths and affirmations; take acknowledgments, affidavits, and depositions;

(3) conduct initial appearance proceedings, inform defendants of their rights, set bail, enter orders of detention, and impose conditions of release;

(4) dismiss complaints in criminal proceedings prior to indictment or information upon motion of the United States attorney;

(5) appoint counsel for indigent defendants,

(6) conduct detention and pretrial release revocation hearings;

(7) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, and other orders necessary to secure the presence of parties, witnesses or evidence for court proceedings;

(8) order the forfeiture or exoneration of bonds;

(9) issue warrants of removal;

(10) conduct hearings under Fed. R. Crim. P. 20;

(11) conduct full preliminary examinations;

(12) set bail and appoint counsel if appropriate, for material witnesses;

(13) issue orders (i) authorizing the installation of devices such as traps/traces and pen registers, and (ii) directing a communication common carrier, as defined in 47 U.S.C. § 153(h) including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers;

(14) receive grand jury returns and pretrial release violation petitions and authorize the issuance of arrest warrants or summons thereupon; and

(15) take a plea of guilty on (i) appropriate reference from the district judge assigned to the case, and (ii) the consent of the parties.

(b) **<u>Criminal Pretrial Authority</u>.**

After an indictment or felony information has been filed and assigned to a district judge under DUCrimR 57-2, magistrate judges are authorized to:

(1) conduct arraignments;

(2) accept or enter not guilty pleas;

(3) order presentence reports;

(4) hear and rule on motions to modify bail and/or conditions of release; and,

(5) conduct scheduling hearings pursuant to Fed. R. Crim. P. 17.1.

(c) <u>Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters</u>.

Upon entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(A), magistrate judges are authorized to determine nondispositive pretrial matters, manage the discovery process, and rule on motions by attorneys appointed under the Criminal Justice Act for services under that act including appointment of experts and investigators. Upon entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(B), magistrate judges are authorized to (i) hear motions to dismiss or quash an indictment and motions to suppress evidence, and (ii) submit to the assigned district judge a report with proposed findings of fact and recommendations.

(d) <u>Criminal Trial Authority</u>.

Magistrate judges are authorized (i) to try persons accused of and (ii) to sentence persons convicted of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401 and as otherwise provided by statute.

(e) <u>Extradition Proceedings</u>.

Unless otherwise ordered by a judge of this court, when a foreign government requests the arrest of a fugitive pursuant to a treaty or convention for extradition between the United States and the requesting country and on the basis of a complaint under oath, a magistrate judge of this court is authorized to issue warrants and conduct extradition proceedings in accordance with the provisions set forth in 18 U.S.C. § 3184.

(f) <u>Specialized Courts</u>.

Upon entry by a district court of an order of reference or consistent with a sentencing order, a magistrate judge is authorized to preside over matters in a specialized court. Specialized courts may address issues confronting offenders as they return to their communities including overseeing services providing diagnostic and risk assessment,

education and job training, substance abuse and mental health treatment and mentoring.

DUCrimR 57-16 REVIEW OF MAGISTRATE JUDGE ORDERS

(a) Preliminary Criminal Matters.

(1) Release and Detention Orders. Any party is entitled to seek review of a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. § 3142 et seq. The motion will be a timely scheduled de novo review by the assigned district judge. Where no judge has been assigned, the clerk will assign the motion under DUCrimR 57-2.

(2) Other Orders and Rulings. Reviews of magistrate judge rulings on criminal motions will be conducted in the same manner as reviews of magistrate judge rulings on civil motions.

(b) Stays of Magistrate Judge Orders.

Pending review of objections, motions for stay of magistrate judge orders initially must be addressed to the magistrate judge.

(c) Final Judgments.

The appeal of final judgments issued by magistrate judges in misdemeanors and petty offenses is governed by DUCrimR 58-1.

DUCrimR 58-1 APPEALS FROM MAGISTRATE JUDGE DECISIONS IN MISDEMEANORS AND PETTY OFFENSE CASES

(a) Time Frames, Filing, and Service Requirements.

(1) Notices of appeal on decisions of the magistrate judge must be filed with the clerk of court within fourteen (14) days after judgment and/or decision. An interlocutory appeal may be taken under Fed. R. Crim. P. 58(g)(2)(A).

(2) The appellant's brief is due within fourteen (14) days after the filing of the notice of appeal. The original must be filed with the clerk of court and a copy served on opposing counsel.

(3) The appellee's brief is due within fourteen (14) days after service of appellant's brief. The original must be filed with the clerk of court and a copy served on opposing counsel.

(4) The appellant may file a reply brief within seven (7) days after service of appellee's brief.

(b) <u>Page Limitations</u>.

Briefs on appeal must not exceed twenty (20) pages except with permission of the court. Appellant reply briefs must not exceed ten (10) pages except with permission of the court.

(c) <u>Action by the Court</u>.

All appeals from magistrate judge decisions will be decided by the court without a hearing, unless otherwise ordered by the court on its own motion or, at its discretion, upon written request of appellant.

DUCrimR 59-1 EFFECTIVE DATE

These rules are effective December 1, 2016.