

FILED
U.S. DISTRICT COURT

2015 NOV 20 A 11: 32

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE MATTER OF ADOPTION OF
AMENDED LOCAL RULES OF COURT

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General Order 15-009

Proposed amendments to the local rules of practice were published for comment and the comment period has expired. The court has reviewed the proposals and the comments.

IT IS HEREBY ORDERED that the following local rules be amended in accordance with the copy attached:

- | | |
|---------------|---|
| DUCiv R 3-2 | The amendment corrects cross references in the procedure for applying for a waiver of filing fee |
| DUCiv R 3 -4 | The amendment deletes reference to a bankruptcy case cover sheet which is no longer in use. |
| DUCiv R 10-1 | The amendment corrects format requirements in light of electronic filing procedures. |
| DUCiv R 42-1 | This rule is amended to expressly provide that the court may, sua sponte, consolidate cases when appropriate. |
| DUCiv R 47-1 | A portion of the local rule is deleted because it is merely duplicates the federal rule. |
| DUCiv R 48-1 | The rule is amended to reflect the federal rule. |
| DUCivR 77-1 | All reference to the Moss Courthouse are deleted. |
| DUCivR 83-7.9 | The rule is amended to reflect amendments in the Federal Rules of Bankruptcy Practice.DUCiv R 5-1 |

DUCrim R 17- 2 The amendment corrects incorrect language in subsection (c)

and a new rule be enacted:

DUCiv R 7-4 This rule governs appeals from the decisions of administrative agencies.

Also, the appendix of forms will be deleted and those seeking forms will be directed to the court's website.

IT IS FURTHER ORDERED that the amended local rules as attached hereto shall be adopted and become effective on December 1, 2015 and

IT IS FURTHER ORDERED that the Clerk of Court shall cause notice of the attached amendments to the local rules be published to the Bar and the public.

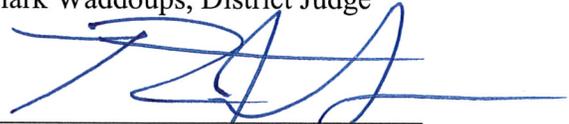
DATED this 20th day of November, 2015



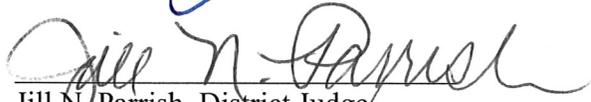
David Nuffer, Chief Judge



Clark Waddoups, District Judge



Robert J. Shelby, District Judge



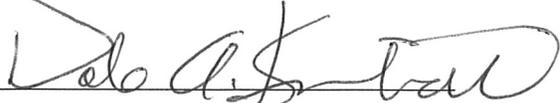
Jill N. Parrish, District Judge



Bruce S. Jenkins, Senior Judge



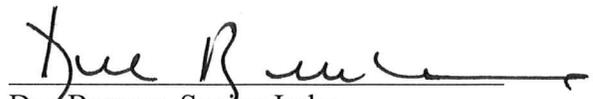
David Sam, Senior Judge



Dale A. Kimball, Senior Judge



Tena Campbell, Senior Judge



Dee Benson, Senior Judge



Ted Stewart, Senior Judge

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. A copy of the form is annexed as Appendix I to these rules.
- (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 ~~it was lodged 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 ~~an Application~~ 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 ~~w~~Without Prepayment of Fees and Affidavit ~~for Incarcerated Pro-Se Plaintiffs, (Prisoner Application)~~, copies of which are available from the clerk of court, ~~and a~~ accompanied by a certified statement of the ~~person applicant~~'s prison trust account showing current account status and any account activity for the six-month period preceding the date of the ~~Prisoner~~ Application. ~~A copy of both forms is annexed as Appendix II to these rules. Under the Prison Litigation Reform Act of 1995,~~ 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) per-cent 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) per-cent 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 a **Prisoner** 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 **Prisoner** Application to ~~the~~ a magistrate judge for review. If the **Prisoner** Application is approved and the fee payment schedule established, the clerk will file the action as of the day ~~it was lodged~~ of the order. If the **Prisoner** Application is denied, the clerk will inform the prisoner of the decision of the court.

~~(3) **Dismissal of Claims as Frivolous under 28 U.S.C §1915.** On receipt of a **Prisoner Application**, a magistrate judge may review the complaint and recommend that (i) the **Prisoner Application** be granted to permit the filing of the action and (ii) that the action be dismissed pursuant to 28 U.S.C. § 1915. If the court accepts the recommendation, the matter will be filed and subsequently closed.~~

(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 3-4 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. ~~All appeals to this court from rulings of the bankruptcy court must be accompanied by a Cover Sheet for Appeals from the U.S. Bankruptcy Court to the U.S. District Court, Form DU-28, available from the clerk of court.~~

This requirement is solely for administrative purposes.

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

**FILINGS IN ALL ACTIONS SEEKING JUDICIAL REVIEW OF A
DECISION FROM AN ADMINISTRATIVE AGENCY****(a) Review of Administrative Agency Decisions Other Than Those From the
Commissioner of the Social Security Administration**

- (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.¹
- (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).

¹ 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 and 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 be filed as a "Reply Memorandum/Reply to Response to Motion" and linked to the "Motion" for "Review of Agency Action" in CM/ECF.²

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.

² 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) **Judicial Review of Decisions from the Commissioner of the Social Security Administration**

- (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.

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
_____ DIVISION

[Plaintiff],
vs.
[Defendant].

Case No.
**[PROPOSED] SCHEDULING ORDER
IN AN ADMINISTRATIVE CASE
UNDER DUCivR 7-4**
Honorable

-
1. Agency Decision(s) Challenged: [List the dates of the decision(s) challenged and a brief summary of those decisions]
 2. Plaintiff's Grounds for Challenging Agency Decision: [*Briefly* state the grounds for challenging each agency decision]
 3. Agency's Reasons in Support of Agency Decision: [*Briefly* state the bases on which the agency will defend its decision(s)]
 4. Dates of Filing of Relevant Documents:
Motion to Amend Complaint: ___/___/___
Amended Agency Statement: ___/___/___
Administrative Record: ___/___/___
 5. Objections to contents of administrative record shall be filed by: ___/___/___
 6. Responses to objections to administrative record shall be filed by: ___/___/___

7. Non-dispositive pre-merits motions by: ___/___/___
8. Plaintiff shall file an "Opening Brief" by: ___/___/___
9. The agency shall file an "Opposition Brief" by: ___/___/___
10. Plaintiff may file a "Reply Brief" no later than: ___/___/___
11. Oral argument on the parties' briefs is scheduled for: ___/___/___

Amendments to this scheduling order shall only be approved for good cause shown.

DATED this ____ day of _____ 2____.

United States District Judge

APPROVED:

Counsel for Plaintiff

Counsel for Agency

DUCivR 10-1

GENERAL FORMAT OF PAPERS

(a) Form of Pleadings and Other Papers

(1) Except as otherwise permitted by the court or a magistrate judge for institutionalized persons, all pleadings, motions, and other papers 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](#).

[The remainder of the Rule remains unchanged]

DUCivR 42-1 CONSOLIDATION OF CIVIL CASES

Any party may file a motion and proposed order to consolidate two or more cases, **or the court sua sponte may enter an order**, for hearing by 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.

Any~~The~~ 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 47-1 IMPANELMENT AND SELECTION OF JURORS

~~(a) **How Impaneled.**~~

~~Unless the court otherwise directs, jurors will be impaneled in the following manner. Sufficient names will be drawn from the courtroom wheel to provide for the requisite number of jurors, to allow for the exercise of the number of peremptory challenges to which the parties are entitled (28 U.S.C. § 1870), and for such additional number as may be necessary to replace those successfully challenged for cause.~~

(ab) 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.

(be) 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 ~~who is called to the box~~ 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.

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 ~~agreement of all twelve (12) members will constitute~~ 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 ~~sixteen~~ members.

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 ~~Frank E. Moss~~ United States Courthouse at ~~350 South Main Street~~ 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

~~For the convenience of persons who are not registered to file electronically, the court maintains a seven (7) day, twenty-four (24) hour filing box at the south Main Street entrance to the Frank E. Moss United States Courthouse. The box is equipped with a time/date stamp, and case related pleadings, motions, proposed orders, and other papers that are stamped and deposited in the box will be filed by the clerk on the time/date they were so stamped and deposited.~~

(c) U.S. Courts Law Library.

The United States Courts Law Library in the ~~Moss~~ 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 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~~8001-1, 8001-2, 8001-4, 8001-5, 8005-1, 8006-1, 8010-1(e) (e), ~~8011-1, 8012-1(c), 8014-1, 8015-1, 8016-6, 8018-1, 8018-4, 8018-9, and 8018-10.~~

The BAP Rules are available at www.bap10.uscourts.gov/rules.php. When applying the BAP Rules, any reference therein to the "bankruptcy appellate panel clerk" means the clerk of this Court, and any reference to "this court" means this District Court.

(b) Transmittal Rule.

Upon issuance of the mandate in accordance with BAP Rule ~~8024-3~~8016-6, as incorporated in these rules by reference in subsection (a) above, a copy of this court's order or judgment and a copy of any opinion will be transmitted by the clerk of the bankruptcy court.

(c) Transmission of the Record Under Fed. R. Bank. P. ~~8010~~ 8007 and Opening of Miscellaneous Case.

- (1) Preliminary Transmission from Bankruptcy Court. Promptly after a notice of appeal and a statement of election are filed, the bankruptcy court clerk will transmit to the clerk a copy of the following:
 - (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. ~~80108007(b)~~.
- (d) **Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 80118009.**
 - (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.

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 ~~seeking to~~ **provide** the contact information for the victims(s) in the case. If the subpoena ~~does not~~ **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.