

UNITED STATES DISTRICT COURT DISTRICT OF UTAH

NOTICE TO THE MEMBERS OF THE BAR AND THE PUBLIC



October 11, 2016

Proposed Amendments to the Local Rules of Practice Public Comment Opportunity

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

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| DUCivR 37-1 | Discovery: Motions and Disputes; Referral to Magistrate Judge
Sets forth a procedure for filing a Short Form Discovery Motion. |
| DUCivR 47-2 | Communication with Jurors
Clarifies that juror contact information will not be disclosed by the court or its employees without a court order. |
| DUCivR 83-1.1 | Attorneys - Admission to Practice
Provides a more streamlined admission procedure for non-resident attorneys appearing before the Court on behalf of the United States or its agencies. |
| DUCrimR 23-1 | Number of Jurors and Alternatives in Criminal Cases
Deletes rule because it is redundant with the Federal Rules of Criminal Procedure. |
| DUCrimR 24-1 | Impanelment and Selection of Jury
Deletes rule because it is redundant with the Federal Rules of Criminal Procedure. |
| DUCrimR 56-1 | Office of Record; Court Library; Hours and Days of Business
Deletes reference to the twenty-four hour filing box, which no longer exists. |
| DUCrimR 57-16 | Review of Magistrate Judge Orders
Corrects statutory reference and changes the word "appeal" to "review" to correspond with statutory language. |

Any comments should be emailed to: Anne_Morgan@utd.uscourts.gov

Comments may also be mailed to:
Anne Morgan, Chief Deputy
United States District Court
351 South West Temple Street
Salt Lake City, Utah 84101

The comment period will end on November 1, 2016 at 5:00 p.m.

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

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

~~(a) Informal Conference to Settle Discovery Disputes.~~

~~(1) When parties or non-parties are represented by counsel in a discovery dispute, the court will not entertain any discovery motion, unless counsel for the moving party files with the court, at the time of filing the motion, a statement showing that counsel making the motion has made a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion. Such statement must provide the date, time, and place where counsel conferred and the names of all participants at the conference.~~

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

~~(b) Motions to Compel Discovery.~~

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

~~(c) Discovery Motions Before Magistrate Judge.~~

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

~~(a) Discovery Disputes.~~

- ~~(1) The parties must make reasonable efforts to resolve the dispute without court assistance. 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.)

The screenshot shows a web interface for selecting events. At the top, there is a search bar with the text "Start typing to find another event." Below this, there are two columns: "Available Events (click to select events)" and "Selected Events (click to remove events)".

Available Events (click to select events):

- Disqualify Counsel
- Disqualify Judge
- Disqualify Juror
- Enforce
- Enforce IRS Summons
- Enforce Judgment
- Entry of Default
- Entry of Judgment
- Exclude
- Expedite** (highlighted in blue)
- Extension of Time
- Extension of Time re Transcript
- Extension of Time to Amend
- Extension of Time to Complete Discovery
- Extension of Time to File Answer

Selected Events (click to remove events):

- Disqualify Judge
- Expedite

At the bottom of the interface, there are two buttons: "Next" and "Clear".

- (6) The opposing party must file its response three business days¹ 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.
- (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.

¹ This provision is not subject to the addition of three (3) days provided by Fed. R. Civ. P. 6(d).

- (10) If disputes arise during a deposition that can most efficiently be resolved by contacting the Court by phone, the parties 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.

DUCivR 47-2 COMMUNICATION WITH JURORS

(a) Communications Before or During Trial.

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) Communications After Trial.

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 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 as

an 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. ~~Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the District of Utah, the Federal Public Defender or other federal agency is recused from the case, the associate local counsel requirement is waived.~~
- (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.

~~DUCrimR 23-1—NUMBER OF JURORS AND ALTERNATES IN CRIMINAL CASES~~

~~(a) — Number of Jurors.~~

~~In all criminal 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. Although the court may excuse jurors from service during trial or deliberation for good cause, the verdict still must be unanimous, and no verdict may be taken from a jury of fewer than eleven (11) members.~~

~~(b) — Number of Alternate Jurors.~~

~~In all criminal actions tried by a jury, the court may direct that one (1) to six (6) jurors in addition to the regular panel be called and impaneled to sit as alternate jurors.~~

~~DUCrimR 24-1—IMPANELMENT AND SELECTION OF JURY~~

~~(a) — Impanelment and Selection of Jury.~~

~~Procedures and requirements regarding the impanelment and selection of a criminal jury are the same as those that apply to a civil jury. They are stated in DUCivR 47-1.~~

~~(b) — Use of Alternate Jurors.~~

~~Alternate jurors in the order in which they are called will replace jurors who, prior to the time the jury retires to consider its verdict, are disqualified from service or, in the judgment of the court, are unable to continue to serve. Alternate jurors will (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, (iv) take the same oath, and (v) have the same functions, powers, facilities, and privileges as principal jurors. Alternate jurors who do not replace principal jurors will be discharged when the jury retires to consider its verdict.~~

~~— See DUCrimR 57-8 for communications with jurors before, during, and after trial.~~

**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, ~~and the twenty-four (24) hour filing box~~ are the same as
those set forth in DUCivR 77-1.

DUCrimR 57-16 ~~APPEAL-REVIEW~~ OF MAGISTRATE JUDGE ORDERS

(a) Preliminary Criminal Matters.

- (1) Release and Detention Orders. Any party is entitled to **seek review of ~~appeal~~**-a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. §§ 3143~~2~~ **et seq.** The **~~appeal-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 **~~appeal-motion~~** under DUCrimR 57-2.