

# UNITED STATES DISTRICT COURT DISTRICT OF UTAH

## NOTICE TO THE MEMBERS OF THE BAR AND THE PUBLIC



December 1, 2017

### Amendments to the Local Rules of Practice

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

**DUCivR 5-2**

**Filing Cases Under Court Seal**

For clarity, this rule now sets forth the procedure for filing *cases* under court seal. The procedure for filing *documents* under court seal is now addressed in DUCivR 5-3.

**DUCivR 5-3**

**Filing Documents Under Court Seal**

This rule was formerly contained in DUCivR 5-2. The amendment discourages sealed filings and clarifies the procedure for filing documents or portions of documents under court seal. Anticipates the upcoming change to require attorneys to electronically file sealed documents in civil cases.

**DUCivR 5-4**

**Habeas Corpus Petitions and Civil Rights Complaints**

Renumbered from DUCivR 5-3 to DUCivR 5-4.

**DUCivR 7-1**

**Motions and Memoranda**

Updated to reflect the changes made to DUCivR 56-1. There is now a word-count option so that parties can choose between a page limitation or a word-count limitation. The rule also clarifies which sections of a motion and memorandum are excluded from these limitations. Eliminated reference to DUCiv 5-1, which previously required courtesy copies to be delivered to the court. Added hyperlink to ECF Administrative Procedures manual regarding courtesy copies.

**DUCivR 7-4**

**Filings in All Actions Seeking Judicial Review of a Decision from an Administrative Agency**

Reorganized the rule, combining sections (a) and (b) into one section so that the filing requirements for Social Security cases are the same

as the filing requirements for other administrative appeals, except for the timing of the filing of the administrative record.

- DUCivR 10-1**            **General Format of Papers**  
Added a statement that the use of 14-point font is encouraged.
- DUCivR 15-1**            **Amended Complaints**  
Eliminated reference in this rule to FRCP 15-1 because there is no such federal rule.
- DUCivR 26-1**            **Discovery Requests and Documents**  
Added the category of Expert Disclosures to the list of documents that must not be filed with the court, but sets forth an alternative requirement to provide expert names and subjects of expertise.
- DUCivR 26-2**            **Standard Protective Order and Stays of Depositions**  
Clarified the requirement to file a motion or a stipulated motion when seeking a protective order other than the standard form protective order.
- DUCivR 30-1**            **Deposition Objections**  
New rule requiring counsel to specifically identify the basis for an objection to the form of a question. Also clarifies that the objection is waived if not timely made at the time of the question.
- DUCivR 54-1**            **Judgments: Preparation of Orders, Judgments, Findings of Fact and Conclusions of Law**  
To comport with Tenth Circuit law, removed subsection (d) that required a written order for the entry of voluntary or stipulated dismissal under Fed. R. Civ. P. 41(a)(1).
- DUCivR 56-1**            **Summary Judgment: Motions and Supporting Memoranda**  
Substantive revision of the rule. Modified the requirements for briefing and for providing supporting evidence. Revised the page limits for all briefs and modified what is included and excluded in the page or work-count limitation.
- DUCivR 72-2**            **Magistrate Judge Functions and Duties in Civil Matters**  
Corrects a previous oversight in the list of a magistrate judge's inherent authority to issue subpoenas and writs of habeas corpus ad testificandum.
- DUCivR 79-1**            **Access to Court Records**  
Updated to reflect the changes made in DUCivR 5-2 and 5-3 and

makes clear that the clerk's office cannot provide sealed documents to any person without a court order.

**DUCivR 83-1.1**

**Attorneys – Admission to Practice**

Clarified the instructions for non-resident attorneys appearing on behalf of the Department of Justice to file a notice of appearance and receive a CM/ECF login. Amended this simplified PHV process to apply to all non-resident attorneys appearing on behalf of the United States and on behalf of an Office of the Federal Public Defender outside of this district.

**DUCivR 83-3**

**Cameras, Recording Devices, and Broadcasts**

Updated the rule to reflect the current policies regarding the appropriate use of electronic devices with wireless communication capability in the new courthouse. Clarified the procedure and requirements for the use of electronic devices in courtrooms by credentialed members of the media.

**DUCrimR 17-1**

**Sealing of Ex Parte Motions and Orders in Criminal Justice Act Cases Relating to Trial Subpoenas**

Removed the requirement that ex parte motions must be filed in CJA cases for the appointment of experts, travel authorization, and other extraordinary expenses as these types of expenses are now submitted through the court's e-Voucher system.

**LPR 2.1**

**Accused Instrumentality Disclosures**

Removed reference to "or other response" to clarify that within seven (7) days after the defendant files its answer, the party claiming infringement must disclose a list identifying each accused instrumentality.

**LPR 2.2**

**Initial Disclosures**

Removed references to "or other response" to clarify that the filing of the answer triggers the time frame in which initial disclosures are to be provided.

**DUCrimR 49-2****Filing Criminal Cases and Documents Under Court Seal**

Removed portion of the rule requiring that DUCivR 5-2 (governing the procedure for filing documents under seal) applies in criminal cases. The civil rules pertaining to the filing of sealed documents do not apply in criminal cases.

## DUCivR 5-1 FILING OF PAPERS

### (a) **Electronic Filing.**

Generally, registered e-filers must electronically sign and file ~~Papers may be filed, signed, and verified by electronic means~~ documents, as set forth ~~consistent with~~ in the CM/ECF and E-filing ~~a~~ Administrative ~~p~~ Procedures Manual (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) **Conventional Filing of Pleadings and Papers.**

In all other ~~circumstances~~ ~~Barring extraordinary circumstances~~, all pleadings and other case-related ~~papers~~ documents ~~required to be conventionally (in paper) 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; or (ii) by mail; ~~or (iii) through the court's electronic filing system.~~ At the time of filing of a document pursuant to subparagraphs (i); ~~and (ii); and (iii);~~ the clerk will require:

- (1) the original of all proposed orders, certificates of service, and returns of service; and
- (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~~ The sealing of new and pending civil cases is highly discouraged. Unless restricted by statute or court ~~has observed that counsel are increasingly and improperly overdesignating sealed materials in pleadings and order,~~ the public shall have access to all documents filed with the court. ~~In order to prevent such overdesignations, the and to all 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 overdesignations 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.~~ proceedings. 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 **only** 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. ~~A motion to file a case under seal must be filed contemporaneously with the complaint. The complaint will remain under seal unless and until the motion is denied.~~

(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) **ProcedureProcedures for Filing Sealed Cases and Documents Under Seal. in Sealed Cases.**

Documents ~~ordered~~ initiating or filed in a sealed ~~by the court or otherwise required to be sealed by statute~~ case must be ~~delivered~~submitted to the ~~court for filing~~clerk's office in the following manner: \_\_\_\_\_

(1) ~~Original Document.~~ The original document must be unfolded in an envelopepaper, along with ~~a~~an electronic PDF-formatted 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;~~document(s) on CD, DVD, 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~~ digital storage device, consistent with the ~~ease name, case number, and the date of delivery,~~ procedures outlined in the court's CM/ECF and E-Filing Administrative Procedures Manual.

~~(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~~Case Dockets and Documents.**

~~Unless otherwise ordered by the court, the~~ The clerk will not provide access to cases and documents under court seal only on court order. ~~Unless otherwise ordered by the court, the clerk will make no~~ information contained in sealed case dockets or provide copies of sealed ~~case files or~~ documents unless ordered by the court.

~~COMPLAINTS~~FILING DOCUMENTS UNDER COURT SEAL~~(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.~~

~~(a) General Rule.~~

~~(1) The records of the court are presumptively open to the public. The sealing of pleadings, motions, memoranda, exhibits, and other documents or portions thereof (hereinafter, “Documents”) is highly discouraged. Unless restricted by statute or court order, the public shall have access to all Documents filed with the court and to all court proceedings. On motion of a party and a showing of good cause, a judge may order that a Document be sealed. 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.

(2) To prevent the overdesignation of sealed Documents in the court record, counsel shall:

(A) Refrain from filing motions or memoranda under seal merely because an attached exhibit contains protectable information;

(B) Redact personal identifiers, as set forth in DUCivR 5.2-1, and publicly file the Document;

(C) Redact the confidential portions of a Document when they are not directly pertinent to the issues before the court and publicly file the Document; and

(D) If the protectable information is pertinent to the legal issues before the court, redact the protectable information from the Document and publicly file the Document. Follow the procedure below to file a sealed version of the Document.

**(b) Procedure for Filing Under Seal.**

(1) Unless otherwise ordered by the court, a party must first publicly file a redacted version of the Document. A Motion for Leave to File Under Seal must be filed contemporaneously with the proposed sealed Document. The motion and proposed sealed Document must be filed as separate docket entries and both linked to the redacted version of the Document. The motion, which may be filed under seal if necessary, and the proposed sealed Document must be electronically filed. The portion(s) of the Document sought to be filed under seal shall be highlighted to identify the specific information that is sought to be sealed.

(2) The Motion for Leave to File Under Seal must specify why the Document is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. Specifically, the motion must:

(A) be narrowly tailored to seek protection of only the specific information that the party alleges is truly deserving of protection; and

(B) state the duration of the seal; and

(C) state the statute, rule, case law, or reason supporting the sealing of the Document; or

- (i) If the sole basis for proposing that the Document be sealed is that another party designated it as confidential or for attorneys eyes only, then so state that reason in the motion. If the designating party seeks to have the Document remain under seal, the designating party must file a Motion for Leave to File Under Seal in accordance with DUCivR 5-3(b)(2) within seven (7) days of service of the motion. If the designating party does not file a motion within seven (7) days, the original motion may be denied, and the Document may be unsealed without further notice.
- (3) The court may make an independent determination as to whether the Document will be sealed, regardless of the parties' agreement or a party's decision not to oppose a Motion for Leave to File Under Seal.
- (4) Subsequent Documents containing information that has already been the subject of an order allowing a sealed filing, must state on the caption page, directly under the case number: "FILED UNDER SEAL PURSUANT TO COURT ORDER (DOCKET NO. \_\_\_\_\_)."
- (5) A Document filed under seal pursuant to section (b)(1) above will remain sealed until the court either denies the Motion for Leave to File Under Seal or enters an order unsealing it.
- (6) The court may direct the unsealing of a Document, with or without redactions, after notice to all parties and an opportunity to be heard, with the exception set forth above in (b)(2)(C)(i).
- (7) The requirements of Rule 5-3(b) may be modified by the court upon a showing of good cause.

**(c) Access to Sealed Documents.**

Unless otherwise ordered by the court, the clerk will not provide access to or make copies of sealed documents.

**DUCivR 5-34 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 7-1 MOTIONS AND MEMORANDA

### (a) Motions.

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.~~ Refer to the court's CM/ECF and E-filing Administrative Procedures Manual for courtesy copy requirements.

#### (1) No Separate Supporting Memorandum for Written Motion.

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), and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages, ~~exclusive of any of.~~ If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes 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 fact~~table of authorities, signature block, certificate of service, and exhibits.

(B) Length of Motions Filed Pursuant to Rule 56 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 56 are governed by DUCivR 56-1(g).

(C) All Other Motions: All motions that are not listed above must not exceed 2,500 words, or in the alternative, ten (10) pages, ~~exclusive of any of.~~ If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes 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 fact~~table of authorities, signature block, ~~certificate of service,~~ 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.<sup>1</sup>

**(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 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 **memorandum**, 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,

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<sup>1</sup> 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.

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), 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), and 65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages, ~~exclusive of any of the following items: face sheet, table of contents, concise introduction, table of exhibits, and exhibits.~~ Reply memoranda must ~~be limited to~~ not exceed 2,500 words, or in the alternative, 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.~~ in opposition. If memoranda in opposition or reply exceed the page limit, then the party must certify compliance with the word count limit. These limitations exclude the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits. No additional memoranda will be considered without leave of court.
- (B) Length of ~~Response~~Opposition and Reply Memoranda Filed Regarding Motions Made Pursuant to Rule 56 of the Federal Rules of Civil Procedure: Memoranda filed pursuant to Fed. R. Civ. P. 56 are governed by DUCivR 56-1(g).
- (C) All Other Motions: ~~Response~~ Opposition and reply memoranda related to all motions that are not listed above must not exceed 2,500 words, or in the alternative, ten (10) pages, ~~exclusive of any of.~~ If opposition or reply memoranda exceed the page limit, then the party must certify compliance with the word-count limit. These limitations exclude 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~~ **opposition memoranda**. 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 Other Than Memoranda Related to Summary Judgment Motions.**

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. For exhibits relating to summary judgment memoranda, see DUCivR 56-1(b)(5) and (c)(6).

(d) **Failure to Respond.**

Failure to respond timely to a motion, **other than for summary judgment**, 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 **or word** 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 **or words** 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 **or word** 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 **or word** 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.*

**FILINGS IN ALL ACTIONS SEEKING JUDICIAL REVIEW OF A  
DECISION FROM AN ADMINISTRATIVE AGENCY****(a) Review of Administrative Agency Decisions.**

- (1) In all 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); **or**
  - (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.  
In cases challenging a decision of the Commissioner of the Social Security Administration, the agency shall file the administrative record along with its short and plain statement.
- (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.<sup>1</sup>
- (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

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<sup>1</sup> 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.

capricious or is not supported by substantial evidence within the time prescribed in Fed. R. Civ. P. 12(b)(4).

- (5) Within fourteen (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 setting forth the dates by which:
  - (A) The agency, in a case other than one challenging a decision of the Social Security Administration, will file the indexed 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 using the CM/ECF event "Motion for Review of Agency Action";
  - (E) The agency will file an "Answer Brief," which must be filed using the CM/ECF event "Memorandum in Opposition to Motion" and linked to the "Motion for Review of Agency Action"; and
  - (F) Plaintiff may file a "Reply Brief," which shall be limited to addressing only those issues raised in the Answer Brief, and must be filed using the CM/ECF event "Reply Memorandum/Reply to Response to Motion" and linked to the "Motion for Review of Agency Action."<sup>2</sup>

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.

- (6) In cases other than a challenge to a decision of the Commissioner of the Social Security Administration, the Opening Brief must follow Fed. R. App. P. 28(a)(2), (3), (5), (6)-(10). The Answer Brief must follow Fed. R. App. P. 28(b) except that

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<sup>2</sup> In the CM/ECF system, "motions" appear on a report that assists the court in managing its docket. For this reason, parties must name their documents "Opening Brief," "Answer Brief," and "Reply Brief," respectively, but must use the CM/ECF events listed above to ensure proper tracking of these filings.

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.~~

- (7) In cases challenging the decision of the Commissioner of the Social Security Administration, Plaintiff's Opening Brief and Defendant's Answer brief must not exceed ~~6,500 words, or in the alternative, 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 ~~2,500 words, or in the alternative, ten (10) pages.~~ These limitations exclude the following items: ~~face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits.~~ If a brief is to exceed the page ~~or word~~ limitations set forth in this rule, leave of court must be obtained. ~~A motion for leave~~Motions to file ~~a lengthy~~an overlength brief ~~must include a statement of the reasons why additional pages are needed and specify the number required.~~ The court discouraged and will ~~approve such requests~~be granted only ~~for~~upon a showing of 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.~~, as forth in DUCivR 7-1(e).

## DUCivR 10-1 GENERAL FORMAT OF PAPERS

### (a) Form of Pleadings and Other Papers.

- (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 ½ 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'~~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:

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**Counsel Submitting, e-mail address, and Utah State Bar Number<sup>1</sup>**

**Attorney For**

**Address**

**Telephone**

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, \_\_\_\_\_ DIVISION**

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<sup>1</sup> 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.



Name of Case	<p>Case No. w/ District Judge Initials</p> <p><b>TITLE OF DOCUMENT</b></p> <p>District or Magistrate <b>Judge's</b> Name (When Applicable)</p>
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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 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 a 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.~~ Font size must be a minimum of 12 point, including footnotes, although ~~larger font sizes are acceptable.~~ use of 14 point is encouraged. 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.

**DUCivR 15-1      AMENDED COMPLAINTS**

Parties moving under FRCP 15-4 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 26-1 DISCOVERY REQUESTS AND DOCUMENTS**

### **(a) Form of Responses to Discovery Requests.**

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) Filing and Custody of Discovery Materials.**

(1) Filing. 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) and (a)(2);
  - (i) in lieu of filing expert disclosures and reports under Fed. R. Civ. P. 26(a)(2), the parties shall file with the court a list of the experts disclosed to the opposing party along with each expert's subject of expertise;
- (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~~ **stipulation** or **stipulated** motion, the Standard Protective Order available on the Forms page of the court’s website <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 30-1            DEPOSITION OBJECTIONS**

Objections during depositions to the form of the question must specifically identify the basis for the objection. Objections to the form may include, but are not limited to, the following objections:

- Ambiguous
- Vague or unintelligible
- Argumentative
- Compound
- Leading
- Mischaracterizes a witness's prior testimony
- Mischaracterizes the evidence
- Calls for a narrative
- Calls for speculation
- Asked and answered
- Lack of foundation
- Assumes facts not in evidence

If the basis for objection as to form is not timely made at the time of the question, the objection is waived. Objections that state more than the basis of the objection and have the effect of coaching the witness are not permitted and may be sanctionable.

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

**(a) Orders in Open Court.**

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) Orders and Judgments.**

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) Proposed Findings of Fact and Conclusions of Law.**

Except as otherwise directed by the court, in all non-jury cases to be tried, counsel for each party must prepare and lodgefile 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 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA**

**(a) Summary Judgment Motions and Memoranda; Length and Filing Times.**

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) Motion; Elements Requirements and Undisputed Material Facts; and Background Facts Supporting Evidence.**

— A motion for summary judgment must include the following sections and be supported by an Appendix of Evidence as follows:

- ~~(1) — An introduction summarizing why summary judgment should be granted;~~
- ~~(2) — A section entitled "Statement of Elements and~~ (1) Introduction and Relief Sought: A concise statement of each claim or defense for which summary judgment is sought, along with a clear statement of the relief requested. The parties should endeavor to address all summary judgment issues in a single motion. If a party files more than one motion, the court may strike the motion and require the motions be consolidated into a single motion.
- (2) Background (Optional): Parties may opt to include this section to provide background and context for the case, dispute, and motion. If included, this section should be placed between the Relief Sought section and the Statement of Undisputed Material Facts section. Factual summaries in the background section need not be limited to undisputed facts and need not cite to evidentiary support.
- (3) Statement of 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);~~<sup>†</sup>

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<sup>†</sup> ~~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.~~



~~(C) Under each element, a concise statement of the undisputed 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. Only those facts necessary to decide the motion should be included in this section. Each asserted fact~~The moving party must be presented in an individually numbered paragraph that cites cite with particularity the evidence in the record supportingAppendix of Evidence that supports each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

(3) — 4) Argument: An argument section explaining why explanation for each claim or defense, of why, under the applicable legal principles, the asserted undisputed facts entitle the moving party is entitled to summary judgment. as a matter of law. The motion may, but need not, arguments should include a separate background section that contains a concise statement of facts, *whether disputed or not*, for the limited purpose of providing background each claim or defense on which the party is seeking summary judgment and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, supporting authorities. Any factual citations must cite to evidentiary support. The motion may also include a concise conclusion explaining the relief requested. the Appendix of Evidence, not the Statement of Undisputed Material Facts.

(5) Appendix of Evidence: All evidence offered in support of the motion must be submitted in a separately filed appendix with a caption and as a separate docket number. To the extent possible, the appendix should include complete copies of all exhibits, including complete copies of depositions. In cases where lengthy depositions are relied upon, the moving party need not submit the entire deposition. However, the moving party must submit at least four (4) pages before and four (4) pages after the cited deposition transcript page(s), for a total of at least nine (9) pages.<sup>2</sup> The appendix should be preceded by a cover page index that

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<sup>2</sup> Minuscripts are permissible, unless otherwise ordered by the court. Only one page of a minuscript before and after the cited deposition transcript page is required, provided that it contains four pages of the deposition transcript on a single page.

lists each exhibit by number, includes a description or title, and if the exhibit is a document, identifies the source of the document.

(c) **Opposition Memorandum in Opposition; Response to Elements and Facts; and Background Facts. Requirements and Supporting Evidence.**

A memorandum in opposition to a motion for summary judgment must include the following sections and, if applicable, be supported by an Appendix of Evidence as follows:

- (1) ~~An introduction summarizing~~ Introduction: A concise summary explaining why summary judgment should be denied;
- (2) ~~A~~ Background (Optional): Parties may opt to include this section ~~entitled "to provide background and context for the case, dispute, and motion. If included, this section should be placed between the Introduction section and the 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 section. Factual summaries in 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~~ background section need not be limited 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 facts and need not cite with particularity the evidence on which the non-moving party relies to dispute that fact (without legal argument).<sup>3</sup> ~~—to evidentiary support.~~

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<sup>3</sup> **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(e)(2).

~~(C)~~—A statement of any additional material facts, (3) Response to Statement of Undisputed Material Facts: A restatement of each fact the opposing party contends is genuinely disputed or immaterial, a concise statement explaining why the fact is disputed or immaterial, and a citation with particularity to the evidence upon which the non-moving party relies to refute that fact.<sup>4</sup> Any factual citations must reference the appropriate party's Appendix of Evidence, rather than either party's factual statements or responses. The non-moving party should not restate all of the moving party's statement of facts and should only respond to those facts for which there is a genuine dispute of material fact.

(4) Statement of 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~~ dispute of material fact, 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 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 and cite~~ with particularity the evidence ~~in that~~ supports the ~~record supporting each~~ factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents) from the appropriate party's Appendix of Evidence.

~~(3)~~—An argument section explaining (5) Argument: An explanation for each claim or defense of why, under the applicable legal principles, summary judgment

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<sup>4</sup> **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).

should be denied. ~~-Any factual citations must cite to the appropriate party's Appendix of Evidence, rather than either party's factual statements or responses. 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.~~

(6) Appendix of Evidence: Utilizing the same procedure set out in DUCivR 56-1(b)(5), all evidence offered in opposition to the motion must be submitted in a separately filed appendix. Counsel must make every effort not to duplicate evidence submitted by the other party. The appendix should be preceded by a cover page index that lists each exhibit by number, includes a description or title and, if the exhibit is a document, identifies the source of the document.

(d) **Reply.**

The moving party may file a reply memorandum ~~consistent with DUCivR 7-1.~~ In the reply, a moving party may **cite** 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~~ 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(e)(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~~ court's granting the motion without further notice~~-,~~, provided the moving party has established that it is entitled to judgment as a matter of law.

(g) **Length of Memoranda and Filing Times.**

- (1) A motion for summary judgment and a memorandum in opposition must not exceed 10,000 words, or in the alternative, forty (40) pages. A reply brief cannot exceed 5,000 words, or in the alternative, twenty (20) pages. If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation includes the following items: introduction, relief sought, background, statement of undisputed material facts, response to statement of undisputed material facts, argument, statement of material facts, and conclusion. This limitation excludes the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and appendix. Motions to file an overlength brief are discouraged and will be granted only upon a showing of good cause and exceptional circumstances, as set forth in DUCivR 7-1(e).
- (2) Filing times are governed by DUCivR 7-1.

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

**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; **and**
- (7) **issue subpoenas, writs of habeas corpus ad testificandum, and other orders necessary to secure the presence of parties, witnesses, or evidence for court proceedings.**

**(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 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~~in the ~~clerk's 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 Clerk's Office-of the Clerk.- The public records of the court are available for examination in the ~~clerk's 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~~clerk's office by members of the bar or the public. However, ~~thea~~ 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.

### (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.

*See DUCivR 5-2, Filing Cases ~~and~~Under Court Seal; DUCivR 5-3 Filing Documents Under Court Seal; and DUCivR 83-5, Custody and Disposition of Trial Exhibits.*

## 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~~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~~ attorney's oath by a U.S. district or circuit court judge.

(D) **Attorney's 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~~ 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~~ 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~~ who appear before this ~~Court~~ court on behalf of the United States-, and/or its agencies, or an Office of the Federal Public Defender outside of the District of Utah 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~~ Prior to filing the notice of appearance,

first time filers in this ~~District~~district must ~~also file~~submit an Electronic Case Filing Registration ~~Form as an exhibit to the notice of appearance to the court~~ at [ut\\_support@utd.uscourts.gov](mailto:ut_support@utd.uscourts.gov). The clerk will generate an e-filing login and password and email them to the newly appearing counsel. Counsel will then electronically file the notice of appearance. This notice of appearance satisfies the rules for admission without further order from the ~~Court~~court unless an opposing party objects to the notice of appearance within fourteen (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~~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~~court:
  - (a) Application and Fee. Applicants must complete and submit to the clerk an [application form](#) available from the ~~clerk of court~~clerk's office. 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 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~~ **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~~ **pro hac vice** must file an objection within **fourteen (14)** days of the motion or **fourteen (14)** days of an order granting a motion for admission ~~Pro Hac Vice~~ **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~~ **pro hac vice** may not continue to appear ~~Pro Hac Vice~~ **pro hac vice** without associated local counsel if the associated local counsel withdraws from the representation.

(e) **Attorneys for the United States and the Office of the Federal Public Defender Residing in This District.**

Attorneys representing the United States government or any agency or instrumentality thereof, including the **Office of the Federal Public Defender's Office** ~~Defender's Office~~ **Defender**, and who reside within this district are required to be admitted to this ~~court's~~ **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~~ on behalf of the United States and/or its agencies, or an Office of the Federal Public Defender outside the District of Utah, 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 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

(a) **Use of Electronic Devices.**

The policy for authorized use of electronic devices in the United States Courthouse in the District of Utah is available on the court's website [www.utd.uscourts.gov](http://www.utd.uscourts.gov). This policy governs the appropriate use of devices such as cellular phones, laptops, tablets, cameras, and other devices having wireless communication capability both in and out of courtrooms within the district court. The unauthorized use of electronic devices is prohibited in any courtroom of the District of Utah.

(b) **Photographs and Recordings.**

The taking of photographs; the making of audio, 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 and may result in confiscation of the offending device by the United States Marshal or deputized Court Security Officer.

(c) **Credentialed Media.**

Credentialed members of the media may petition the clerk of court for leave to use electronic devices in public hearings pursuant to the policy of the district or magistrate judge conducting the hearing. Usage policies for each district and magistrate judge may be found on the [court's website](#). [Applications](#) for use of electronic devices and a list of permissible uses of electronic devices for current judges are available in the clerk's office and on the court's website.

(d) **Exceptions.**

The court, ~~however~~, may permit the broadcasting, televising, recording, or photographing of ~~investiture~~investitive, 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.

**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 on only ~~on~~ the party that made the motion. ~~The clerk will retain such motions and orders under seal until~~Motions for appointment of experts, authorization of travel, and other extra-ordinary expenses shall be submitted using the ~~case proceeds to trial or a judgment is issued~~court's e-Voucher system.

*See [DUCrimR 16-1](#) for discovery ordered by pretrial conference and [DUCrimR 44-1](#) for payment of services.*

**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~~ 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~~ criminal case be sealed. The court may order that, in the interests of justice, critical documents in sensitive criminal matters be placed and remain under court seal for extended periods.

**LPR 2.1 ACCUSED INSTRUMENTALITY DISCLOSURES**

No later than seven (7) days after the defendant files its answer, 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. Civ. P. 26(a)(1) (“Initial Disclosures”) no later than twenty-one (21) days after the defendant files its answer; provided, however, if the defendant asserts a counterclaim for infringement of another patent, the 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; provided, however, if the defendant asserts a counterclaim for infringement of another patent, the 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. Civ. P. 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.