UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

AUGUST 11, 2023

NOTICE TO MEMBERS OF THE BAR AND PUBLIC

Proposed changes to the Local Rules of Practice

Public Comment Opportunity Expires on September 1, 2023

The Advisory Committee on the Local Rules of Practice invites comments about the proposed rule changes. The summary that follows was prepared to help the public quickly understand the general changes to the rules. The summary should not be relied on as a substitute for a complete review of each rule and the proposed changes. There will be formatting anomalies between the clean and redline copies – please focus on the formatting in the clean copy. As a courtesy, the court has provided copies of the forms that either have been updated or were newly created during the 2023 rule revision cycle. While the court welcomes comments on these forms, the court will revise its forms, from time to time, without seeking public comment.

CIVIL RULES

DUCivR 7-1	**Motions and Memoranda (Amend)** The Committee received a comment requesting that clarifying language be added to notify parties that informal arrangements to extend the motion filing deadlines are ineffective. The court must approve agreements to extend deadlines as required in DUCivR 83-6. Section (a)(5) was added to clarify that a stipulation to extend filing times is ineffective without a court order.
DUCivR 7-4	**An Action Seeking Judicial Review of a Decision from an Administrative Agency (Amend)** Clarifies the sections of the rule that apply to Social Security Actions under 42 U.S.C. § 405 and refers those who electronically file to the ECF Procedures Manual for guidance.

DUCivR 26-1	**General Provisions Governing Discovery (Amend)** The Committee received a comment requesting clarifying language be added to section (a)(1)(D) to notify parties that they should not file a certificate of service for initial disclosures discovery, expert disclosures, or notices of depositions. Clarifying language was also added to section (a)(2) confirming that parties should file a notice of designation of experts for conflict purposes.,
DUCivR 30-2	**Notices Required for Depositions Under Fed. R. Civ. P. 30(b)(6) (Amend)** General stylistic clean up to improve clarity and readability. The Committee received a comment suggesting use of the phrase "notice or subpoena" to be consistent with Fed. R. Civ. P. 30(b)(6). The title and rule were amended to include "subpoena."
DUCivR 37-1	**Discovery Disputes (Amend)** Section (b)(3) was amended to clarify that exhibits in addition to the disputed discovery should not be attached. Section (b)(7) was amended to clarify that a motion for leave to file an overlength motion or response must adhere to the requirements of DUCivR 7-1(a)(4)(D). Section (b)(7) was added to the rule to clarify that a motion to quash a subpoena and a motion related to the standard protective order are exempt from the short form briefing requirements of DUCivR 37-1 and instead follow DUCivR 7-1(a)(4)(D).
DUCivR 54-2	**Costs: Taxation of Costs and Attorney's Fee (Amend)** General stylistic clean up to improve clarity and readability. Clarifies a motion for attorney's fees should be separate from a Bill of Costs. Clarifies the briefing requirements for the motion and affidavit for motion for attorney's fees. Additionally, specified the briefing requirements related to a Bill of Costs and eliminated the Clerk of Court's ability to hold a hearing to resolve objections. The title of the rule was revised to mirror the proposed amendments.
DUCivR 55-1	**Default and Default Judgments (Amend)** General stylistic clean up to improve clarity and readability. Clarifies that a Clerk's Certificate of Default is not required when a party seeks a default judgment as a sanction. Clearly identified the briefing requirements for parties seeking a default judgment for a sum certain. The title of the rule was revised to mirror the proposed amendments.
DUCivR 56-1	**Summary Judgment Motions and Memoranda (Amend)** The first sentence of section (b) was eliminated because the Committee received a comment that some practitioners were

	interpreting it to mean that a party could file only 1 summary judgment motion during the pendency of the case. The rule was clarified to confirm parties should cite to the appropriate appendices. instead of the Statement of Undisputed Facts.
DUCivR 67-1	**Receipt and Deposit of Registry Funds (Amend)** General stylistic clean up to improve clarity and readability. In 2015 and 2016, the court issued General Orders 15-002a and 16-007. These orders adopted local procedures to ensure uniformity in the deposit, investment, and tax administration of funds held in the court's registry. Sections of General Order 16-007 conflicted with this rule. Additionally, changes were made to the Guide to Judiciary Policy related to when a court must accept electronic fund transfers. The amendments to the rule supersede the General Orders referenced above and clearly identify the necessary information that must be contained in the court order for depositing or withdrawing funds from the court's registry.
DUCivR 71.1-1	**Deposits in the Court Registry (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 67-1.
DUCivR 72-3	**Response to an Objection to a Magistrate Judge Decision (Amend)** General stylistic clean up to improve clarity and readability. Clarifies the page or word limits for an objection and response. The title of the rule was revised to mirror the proposed amendments.
DUCivR 72-4	**Consent to the Jurisdiction of the Magistrate Judge (Amend)** An amendment was made to section (b)(1)(A) to incorporate the requirements of General Order 23-003 to exempt cases filed by a party who is incarcerated from direct assignment to a magistrate judge.
DUCivR 81-2	**Removed Actions (Amend)** The court changed the requirements associated with filing the Attorney Planning Meeting Report and proposed Scheduling Order after removal. Section (d) has been amended to reflect the current requirements for filing those documents with the court.
DUCivR 83-1.2	**Attorneys – Annual Registration (Amend)** An amendment was made to section (d)(2) to incorporate the requirements of General Order 23-005 to permit the court to set the attorney reinstatement fee.
DUCivR 83-1.3	**Attorneys – Appearances by Attorneys (Amend)** General stylistic clean up to improve clarity and readability. Clarifies that an attorney who signs a waiver of service has entered a general appearance in the case and must be admitted to practice

	before the court. Clarifies that an attorney who has accepted a limited scope pro bono assignment, at the court's request, on behalf of a party who is incarcerated does not need to secure the party's signature on the limited appearance. Clarifies in section (c) that a federally recognized tribe may be exempt from needing an attorney to appear on its behalf. In section (e), clarifies the requirements for an attorney to provide the court with updated contact information. The title of the rule was revised to mirror the proposed amendments.
DUCivR 83-1.4	**Attorneys – Substitution and Withdrawal of Attorney (Amend)** General stylistic clean up to improve clarity and readability. The Committee received a comment requesting clarification about what happens when an attorney withdraws leaving the client unrepresented and without the client's consent. Clarifies that when a trial date is pending and an attorney is being replaced by new counsel, an attorney does not need to file a motion for leave before withdrawing from the case.
DUCivR 83-1.5-1	**Attorney Disciplinary Actions – General Provisions (Amend)** General stylistic clean up to improve clarity and readability. Combined all attorney discipline rules and the reinstatement rule in 1 rule. Established a process for the Clerk of Court to impose reciprocal discipline, which an attorney may challenge by filing a motion for relief from the Clerk's order. If a motion to challenge the Clerk's order is filed, the Disciplinary Panel will address the motion. Explained the various disciplinary authorities the court may employ to assist in resolving an attorney disciplinary matter. Section (f)(4) clarifies that an order of discipline will be reflected in the attorney's status in the court's public attorney directory. The title of the rule was revised to mirror the proposed amendments. The rule will be renumbered to DUCivR 83-1.7 to accommodate the renumbering of DUCivR 83-1.6 and 83-1.7.
DUCivR 83-1.5-2	**Reciprocal Discipline (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-3	**Criminal Conviction Discipline (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-4	**Referral by a Judicial Officer (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-5	**Attorney Misconduct Complaint (Eliminate)**

	This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-6	**Committee on the Conduct of Attorneys (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-7	**Evidentiary Hearing (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.5-8	**Reinstatement (Eliminate)** This rule is unnecessary because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.6	**Attorneys – Student Practice Rule (Renumbered)** This rule will be renumbered to DUCivR 83-1.5 because of the changes to DUCivR because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-1.7	**Conduct of an Unrepresented Party (Renumbered)** This rule will be renumbered to DUCivR 83-1.6 because of the changes to DUCivR because of the amendments to DUCivR 83-1.5-1.
DUCivR 83-5	**Custody and Disposition of Trial Exhibits (Amend)** General stylistic clean up to improve clarity and readability. Clarifies the process for retention of hearing and trial exhibits by the court and parties. The amendments are made to create uniform retention and disposal of hearing and trial exhibits by the court and parties.

CRIMINAL RULES

DUCrimR 5-2	**Pretrial Service Reports (Amend)** General stylistic clean up to improve clarity and readability. Identified a process in section (c) for the handling and filing of documents the court receives related to the issue of detention before the hearing. Eliminated the requirement in section (d) for defense counsel and the government to destroy copies of the reports. In section (e), clarifies when the court may authorize additional disclosure of the reports. The title of the rule was revised to mirror the proposed amendments.
DUCrimR 32-1	**Presentence Investigation Reports: Time, Objections, Submission, Resolution of Disputes (Amend)** General stylistic clean up to improve clarity and readability. Clarifies the process for objecting to the Presentence Investigation Report, which is modeled after the process in the United States Sentencing Commission Guidelines. Identified a process in section (b)(4) for the handling and filing of documents the court receives related to

	sentencing before the hearing. The title of the rule was revised to mirror the proposed amendments.
DUCrimR 41-1	**Sealing of Fed. R. Crim. P. 41 Cases and Documents (Amend)** The Committee received a request from the United States Attorney's Office to create a carve out from the motion requirement if all that is being redacted is personal identifiers that are required to be redacted under Fed. R. Crim P. 49.1. Section (a)(2) was created to address the United States Attorney's Office request.
DUCrimR 44-1	**Right to and Assignment of Counsel (Eliminate)** This rule is unnecessary because case law and Fed. R. Crim. P. 44 sufficiently address a defendant's right to counsel.
DUCrimR 57-3	**Association and Filing of Criminal Cases (Amend)** General stylistic clean up to improve clarity and readability. Clarifies the process for transferring cases when supervised release violations are pending and when they are not. Identified the judge who should rule on the motion to transfer.

PATENT RULES

LPR Preamble	**Preamble (Eliminate)** Recommendation is to eliminate Preamble because it is superfluous to the content that is already in the rules.
LPR 1	**Scope of Rules and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. Added LPR 1.8 to replace LPR 3.5, which has been eliminated. This new section clarifies the process for a motion to stay pending reexamination or other post-grant proceedings.
LPR 2	**Patent Initial Disclosures and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. Section 101 ineligibility contentions were added to LPR 2.4 in response to comments the Committee received.
LPR 3	**Final Contentions and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. LPR 3.5 was eliminated.
LPR 4	**Claim Construction Proceedings and sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. LPR

	4.3(e) clarifies that a second deposition is not available for witnesses who have been previously deposed, which was part of the old LPR 4.2(a).
LPR 5	**Expert Witnesses and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. Amended LPR 5.1 to provide 3 sets of expert reports to be consistent with the changes to the proposed Scheduling Order used in general civil litigation cases. Deleted LPR 5.1(d) because it is redundant with the federal rule.
LPR 6	**Dispositive Motions and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized. Eliminated LPR 6.2 because it created unnecessary premature summary judgment briefing before the court had ruled on the claim construction briefs.
LPR 7	**Final Pretrial Conference and Sections (Amend)** General stylistic clean up to each section of the rule to improve clarity and readability. Those stylistic changes are not summarized.
Appendix	**Appendix (New)** Added as an illustrative display of the chronology of the LPR deadlines and events.

FORMS

Attorney Planning Meeting Report – General (Amend) General stylistic clean up to improve clarity and readability. Those stylistic changes are not summarized. Adds statement regarding good cause to support the entry of the court's Standard Protective Order. Creates a process for utilization of a protective order that is not court's Standard Protective Order. Adds option to clarify if the parties do not intend to disclose information, documents, or other materials that will be designated as confidential. Clarifies filing of notice designation of experts, as required in DUCivR 26-1, to support internal court conflict checks. Better aligns deadlines with court practices.
Attorney Planning Meeting Report – Patent (New)
Proposed Scheduling Order – General (Amend) General stylistic clean up to improve clarity and readability. Those stylistic changes are not summarized. Adds statement regarding good cause for entry of the court's Standard Protective Order. Clarifies filing of notice designation of experts, as required in DUCivR 26-1, to support internal court conflict checks. Better aligns deadlines with court practices.
Proposed Scheduling Order Pre-Claim Construction – Patent (New)

Proposed Scheduling Order Post-Claim Construction – Patent (New)
Proposed Scheduling Order – Administrative Case Under DUCivR 7-4 (Amend) General stylistic clean up to improve clarity and readability. Those stylistic changes are not summarized.
Proposed Scheduling Order – ERISA (New)
Standard Protective Order (Amend) Complete rewrite and stylistic clean up to improve clarity and readability. Those stylistic changes are not summarized. Clarifies who is allowed access information, documents, or other material that is designated as CONFIDENTIAL. Includes a revised Acknowledgement and Agreement to be Bound for technical advisors to sign. Clarifies that an inadvertent disclosure of attorney-client privileged or work-product protected information is not a waiver of the privilege or protection. Imposing the inadvertence standard under Fed. R. Evid. 502(b) undermined the reason that Rule 502 was enacted, which was imposed for those instances where no protective order is in place.

Members of the bar and the public are encouraged to make suggestions or proposals regarding the local rules by sending an email to Utd_public_comments@utd.uscourts.gov. The deadline for submitting suggestions or proposals to be considered during the local rules amendment cycle is May 1 each year.

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) Motion, Response, and Reply.

(1) Motion and Memorandum. Except as otherwise allowed by this rule, a motion and memorandum must be contained in the same document and include the following:

(A) an initial separate section stating succinctly the specific relief sought and the grounds for the relief; and

(B) a recitation of relevant facts, supporting authority, and argument.

(2) Exception to the Requirement to Include Facts and Supporting Authority. The requirement to include facts and supporting authority under section 7-1(a)(1)(B) does not apply to the following motions:

(A) to extend time for the performance of an act, whether required or permitted, if the motion is made before the current deadline expires;

(B) to continue a hearing or other court proceeding;

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

(D) to substitute a party;

(E) for a settlement conference;

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

(G) for approval of a stipulation between the parties.

(3) No Motion Within a Response or Reply. A party may not make a motion, including a motion under Fed. R. Civ. P. 56(d), or a cross-motion in a response or reply. Any motion must be separately filed. A cross-motion may incorporate by reference the arguments contained in a response, if applicable.

(4) Page and Word Limits and Filing Times. Unless the court orders otherwise or the parties stipulate to shorter requirements, the following apply:

(A) *Motions Filed Under Fed. R. Civ. P. 12(b), 12(c), or 23(c).*

(i) A motion or a response may not exceed 25 pages or 7,750 words.

(ii) A reply may not exceed 10 pages or 3,100 words.

(iii) A response to a motion must be filed within 28 days after service of the motion.

(iv) A reply may be filed within 14 days after service of the response.

(B) *Motions Filed Under Fed. R. Civ. P. 56(a).*

(i) A motion or a response may not exceed 40 pages or 12,400 words.

(ii) A reply may not exceed 20 pages or 6,200 words.

(iii) A response to a motion must be filed within 28 days after service of the motion.

(iv) A reply may be filed within 14 days after service of the response.

(C) *Motions Filed Under Fed. R. Civ. P. 65*.

(i) A motion or a response may not exceed 25 pages or 7,750 words.

(ii) A reply may not exceed 10 pages or 3,100 words.

(iii) A response to a motion must be filed within 14 days after service of the motion.

(iv) A reply may be filed within 14 days after service of the response.

(D) *All Other Motions.*

(i) A motion, response, or reply not specified above may not exceed 10 pages or 3,100 words.

(ii) A response to a motion must be filed within 14 days after service of the motion.

(iii) A reply may be filed within 14 days after service of the response.

(5) Stipulation to Extend Filing Time. Parties seeking to extend the filing time for a response or reply must file a stipulated motion before the filing time has passed. A stipulation to extend a filing time is ineffective without a court order.

~~(5)~~(6) Sections Applicable to Page or Word Limits and Certification Requirement.

(A) All headings, citations, quotations, and footnotes count toward the page or word limit.

(B) The caption, face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits do not count toward the page or word limit.

(C) When a document exceeds the page limit, a party must certify at the end of the document that the document complies with the word limit (e.g., "I, [attorney's name], certify that this [name of document] contains [number of words] words and complies with DUCivR 7-1(a)(4).").

~~(6)~~(7) Overlength Motion, Response, or Reply.

(A) Unless modified by the assigned judge in a court order or on their "practices and procedures" page on the court website, a party must first obtain a court order authorizing the additional pages or words before filing a motion, response, or reply that exceeds the page or word limits in section 7-1(a)(4). The motion must be filed, and the

order obtained, before filing the overlength motion, response, or reply. The motion to exceed the page or word limit must include:

(i) the number of additional pages or words that are needed; and

(ii) a statement of good cause why additional pages or words are needed.

(B) An overlength motion, response, or reply must contain a table of contents.

~~(7)~~(8) Motion Seeking Relief Similar to Another Party's Motion. Each party seeking relief from the court must file a motion that identifies the relief sought and grounds for the requested relief. A party may incorporate by reference another party's arguments in the party's own motion, if applicable, but filing a "Notice of Joinder" is improper.

~~(8)~~(9) Additional Memoranda. Unless otherwise ordered, the court will not consider additional memoranda.

(b) Motion to Strike Evidence Improper; Evidentiary Objections Permitted.

(1) A motion to strike evidence offered in another party's motion, response, or reply is improper.

(2) If evidence is offered in a motion or a response, the response or reply may include an objection to the evidence. In exceptional circumstances, the objection may be filed as a separate document simultaneously with the response or reply.

(3) If new evidence is offered in a reply, an evidentiary objection must be filed within 7 days after service of the reply.

(4) A party may file a response to an evidentiary objection at the same time any response or reply is due or no later than 7 days after the objection was filed, whichever is later.

(c) Supplemental Authority.

When pertinent and significant authority comes to the attention of a party before the court has entered a decision on a motion, the party may file a Notice of Supplemental Authority, which may not exceed 2 pages.

(1) The notice must contain, without argument, the following:

(A) a reference either to the page of the memorandum or to a point argued orally to which the supplemental authority pertains; and

(B) the reasons why the supplemental authority is relevant.

(2) The court may decide a motion without waiting for a response to the notice. If the court has not ruled on the motion, a party may file a response, which may not exceed 2 pages, within 7 days after service of the notice.

(d) Supporting Exhibits.

When evidence is cited in a motion, response, or reply, the relevant portions of the evidence must be attached or filed separately and contemporaneously with the document.

(e) Proposed Orders.

(1) When Required. A party must provide a proposed order when filing a motion under section 7-1(a)(2) of this rule or when the court orders otherwise.

(2) Filing Procedures. To file a proposed order, a party must:

(A) attach it as an exhibit to the motion; and

(B) email an editable copy of the proposed order, copied to other parties or their counsel—

(i) for motions filed under DUCivR 77-2, to utdecf_clerk@utd.uscourts.gov; and

(ii) for all other motions, to the assigned judge's chambers.

(f) Failure to Respond.

Except as provided in DUCivR 56-1(f), failure to respond timely to a motion may result in the court granting the motion without further notice.

(g) Oral Arguments on Motions.

The court may set any motion for oral argument. Otherwise, a party may request oral argument on a motion and must show good cause. If oral argument is not set, the court will determine a motion based upon the parties' written memoranda.

(h) Summary Judgment.

This rule and DUCivR 56-1 apply to motions for summary judgment and related memoranda.

(i) Courtesy Copies.

The court may require a party to provide courtesy copies as described in the court's ECF Procedures Manual and on the Judge Information section of the court's website.

(j) Sanctions.

Failure to comply with the requirements of this rule may result in the court imposing sanctions, including:

(1) returning the document for resubmission in ~~accordance~~accord with the rule;

(2) denial of the motion; or

(3) any other sanction ~~that~~ the court deems appropriate.

DUCivR 7-4 AN ACTION SEEKING JUDICIAL REVIEW OF A DECISION FROM AN ADMINISTRATIVE AGENCY

(a) Governing Rules.

When a party seeks judicial review of an administrative agency's decision under an arbitrary and capricious or substantial evidence standard of review in civil actions ~~other than review of Social Security decisions under 42 U.S.C. § 405(g),~~ the Federal Rules of Civil Procedure apply unless other law or these rules require otherwise.[1] ~~Except for the formatting requirements in section 7-4(d),~~ ~~review~~Review of Social Security decisions is governed by the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g~~).~~) and is not covered by this rule, except for the formatting requirements in section 7-4(d)(4)-(6). For the CM/ECF filing requirements for Social Security Actions, see the ECF Procedures Manual for guidance.

(b) Initial Filings.

(1) A complaint must include:

(A) identification of the final agency action or any part being challenged;

(B) factual allegations supporting the grounds for the challenge; and

(C) the legal basis for subject-matter jurisdiction for the action.

(2) In response to a complaint, the agency must file one of the following responsive documents within the time prescribed by statute, rule, or court order:

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

[1] Advisory Committee Note: This provision is intended to clarify that the Federal Rules of Civil Procedure 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 other law or rules.

(B) a short and plain statement—

(i) admitting or denying that the decision, or any part of it, is arbitrary and capricious or not supported by substantial evidence; and

(ii) identifying any affirmative defenses.

(3) The following responsive pleadings are not allowed:

(A) an answer;

(B) a motion for judgment on the pleadings;

(C) a motion for summary judgment; or

(D) a motion to affirm or reverse the decision.

(4) If the agency files a motion to dismiss and the court denies that motion, the agency must comply with section 7-4(b)(2)(B) within the time prescribed by Fed. R. Civ. P. 12(a)(4)(A).

(c) Scheduling Order.

(1) In lieu of an Attorney Planning Meeting Report under Fed. R. Civ. P. 26(f), and within 14 days after the agency files its short and plain statement, the parties must submit a proposed scheduling order that contains:

(A) a brief statement of—

(i) the claimed errors in the agency's decision; and

(ii) the reasons the agency claims its decision was not arbitrary and capricious or was supported by substantial evidence;

(B) dates by which the following will be filed—

(i) the indexed administrative record, if one has not already been filed;

(ii) objections to the administrative record and responses;

(iii) any other motions;

(iv) ~~the~~an Opening Brief, which must be filed using the CM/ECF event, "Motion for Review of Agency Action";

(v) ~~the~~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

(vi) a Reply Brief, which is limited to addressing only those issues raised in the Answer Brief, and which 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."[2]

(2) The Scheduling Order will govern the filing deadlines for the parties' respective briefs unless the court orders otherwise.

(d) ~~Briefs~~Brief Requirements.

(1) Fed. R. App. P. 28(a)(2), (3), (5)-(10) govern the Opening Brief;

(2) Fed. R. App. P. 28(b) governs the Answer Brief, except that it need not follow the requirements of Fed. R. App. P. 28(a)(1) or (4);

(3) Fed. R. App. P. 28(c) governs the Reply Brief;

(4) The following page and word limits apply, unless, on showing of good cause, the court orders otherwise ~~on showing of good cause~~:

(A) in a case seeking review of a Social Security Administration Commissioner's decision, Opening and Answer Briefs must not exceed 7,750 words, and a Reply Brief must not exceed 3,875 words;

[2] The parties must follow the proper naming and filing conventions to ensure that the documents appear on the proper CM/ECF reports to assist the court in managing its docket and tracking these filings.

(B) in all other cases, brief length is governed by Fed. R. App. P. 32(a)(7); and

(C) word limits exclude the caption, face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits.

(5) The formatting requirements of DUCivR 10-1 apply.

(6) Unless the court orders otherwise, the court will not consider additional briefs.

DUCivR 26-1 GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Filing.

(1) Not Filed. Unless the court orders otherwise, the following must not be filed:

(A) the disclosures required by Fed. R. Civ. P. 26(a)(1);

(B) the expert disclosures and reports required by Fed. R. Civ. P. 26(a)(2);

~~(B)~~(C) the deposition notice required by Fed R. Civ. P. 30(b);

~~(C)~~(D) the discovery requests or responses served under Fed. R. Civ. P. 33, 34, or 36; and

~~(D)~~(E) a certificate of service ~~of~~for discovery requests or responses~~.~~, including the items listed in section (a)(1)(A)-(D).

(2) Expert ~~Disclosure. In lieu of filing expert disclosures and reports under Fed. Designation for Conflict Check. To allow the court to conduct a conflict check,~~ ~~R. Civ. P. 26(a)(2),~~ the parties must file ~~with the court,~~a notice of designation by the date specified in the governing scheduling order~~, a list of the disclosed~~ that lists their experts and the ~~expert's subject~~experts' subjects of expertise ~~to allow the court to conduct a conflict check~~.

(3) Exceptions. ~~Subsection~~Section (a)(1) does not preclude filing a copy of the ~~discovery~~ materials identified above to be used at a hearing, trial, or as an exhibit to a motion, response, or reply.

(b) Form.

(1) A party serving a discovery request under Fed. R. Civ. P. 33, 34, or 36 must sequentially number each request.

(2) When serving discovery on behalf of a represented party, the requesting party must provide the discovery request in an editable electronic format to opposing counsel upon request.

(3) A party responding to a discovery request served under Fed. R. Civ. P. 33, 34, or 36 must repeat in full each sequentially numbered discovery request above the response.

(c) Custody. ~~The party serving the discovery material or taking the deposition must retain the original.~~

The party serving the discovery material or taking the deposition must retain the original.

DUCivR 30-2 ~~NOTICES~~NOTICE OR SUBPOENA REQUIRED FOR DEPOSITIONS UNDER FED. R. CIV. P. 30(b)(6)

(a) ~~The~~Notice or Subpoena.

(1) A 30(b)(6) notice or subpoena must be served at least 28 days ~~prior to~~before the scheduled deposition and at least 45 days before the discovery cutoff date. ~~Within 7 days of being served with the~~ A notice~~, the noticed entity may serve written objections. If the parties are unable to resolve the objections within 7 days of service of the objections, either party may seek resolution from the court in accordance with DUCivR 37-1. If the motion is not resolved before the set date of the deposition, the deposition may proceed on subject matters not addressed by the motion.~~

(2) ~~Unless otherwise agreed to by the parties or ordered by the Court upon a showing of good cause, the notice~~ or subpoena must not~~-~~:

(A) exceed more than 20 topics, including subparts~~,~~;

(B) exceed 7 hours in length for the deposition of all corporate representatives ~~produced in response to such notice must not exceed 7 hours in length, and~~ ; or

(C) be a duplicative notice or subpoena to a party ~~may not serve more than one notice on any particular party or non-party.~~ or nonparty.

(D) The court, or the parties by agreement, may modify the limitations in section (a)(2).

~~(A)~~(E) If a request for documents accompanies ~~the~~a notice or subpoena, it is subject to the provisions of Fed. R. Civ. P. 34. If a subpoena duces tecum accompanies the notice, it is subject to the applicable Federal Rules of Civil Procedure and Local Rules.

(b) Objection.

Within 7 days of being served with a notice or subpoena, the noticed entity may serve a written objection. If the objection remains unresolved within 7 days of service of the objection, a party may seek resolution from the court by filing a motion in accordance with DUCivR 37-1. If the motion is not resolved before the date set for the deposition, the deposition may proceed on subject matters not addressed by the motion.

DUCivR 37-1 DISCOVERY DISPUTES

(a) Resolution Without Court Assistance.

(1) The parties must make reasonable efforts to resolve a discovery dispute arising under Fed. R. Civ. P. 26-37 before seeking court assistance.

(2) At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure or request~~(s)~~ at issue, the response~~(s),~~, and specifying why ~~those responses~~the response or ~~objections are~~objection is inadequate~~,~~; and~~;~~

(B) requesting to meet and confer, either in person or by telephone, and ~~including~~include suggested dates and times.

(b) Short Form Discovery Motion.

(1) If the discovery ~~disputes remain~~dispute remains after reasonable efforts, and the parties need a court order to resolve the dispute, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(2) The motion must:

(A) include a certification that states—

(i) the parties made reasonable efforts to reach agreement on the disputed matters;

(ii) the date, time, and method of the reasonable efforts; and

(iii) the names of all participating parties or attorneys;

(B) include as the only exhibits to the motion a copy of the disputed discovery request and any response; and

(C) be filed no later than 45 days after the prompt written communication in section 37-1(a)(2) was sent to opposing counsel, unless the court grants an extension of time for good cause. Failure to meet ~~these deadlines~~the deadline may result in automatic denial of the motion.

(3) The opposing party must file its response 5 business days[1] after the filing of the motion, unless the court orders otherwise. The response must not exceed 500 words, exclusive of caption and signature block and must not include any additional exhibits.

(4) At the time of filing a motion or response, each party must email to chambers and the opposing party a proposed order in a word processing format.

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

(A) set a hearing without waiting for a response to the motion;

(B) decide the motion after the opposing party has had an opportunity to respond, either at a hearing or in writing; or

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

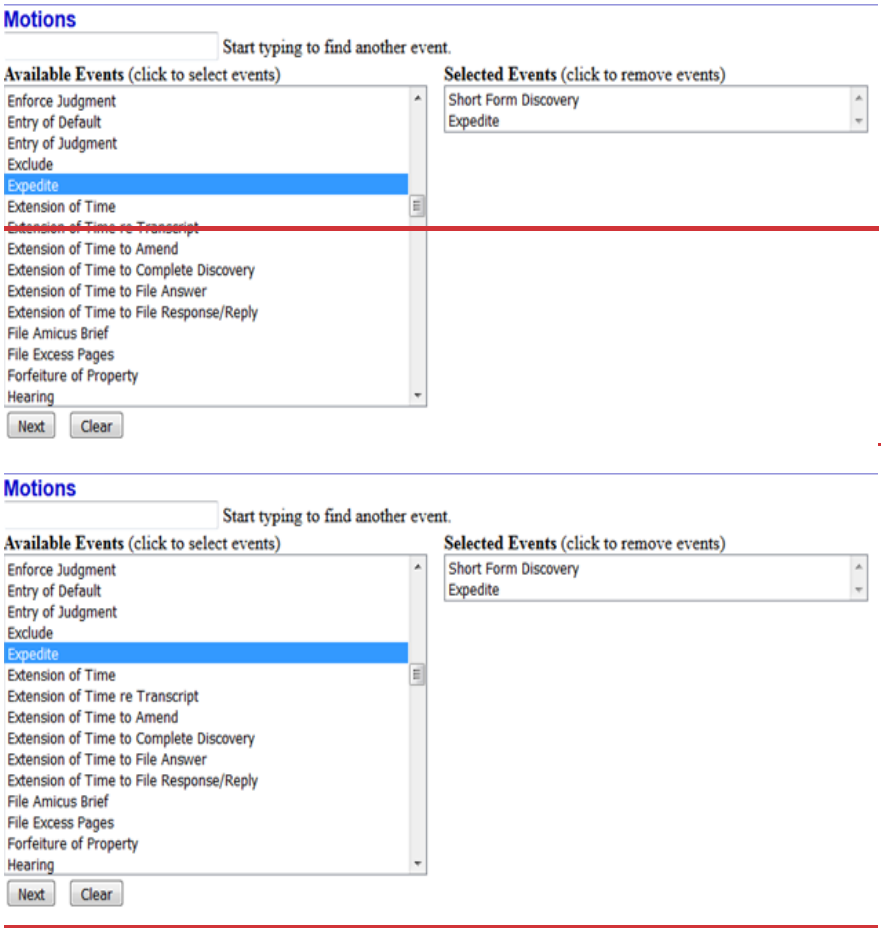
(6) ~~Any~~A party may request ~~for~~leave to file an overlength ~~briefing must accompany, and not replace, the substantive argument about the~~ short form discovery ~~dispute~~motion or response consistent with DUCivR 7-1.

(7) A motion to quash a subpoena or a motion related to the standard protective order is exempt from the Short Form Discovery Motion requirements above and must follow DUCivR 7-1(a)(4)(D).

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

(c) Expedited Consideration.

When filing its motion in CM/ECF, the moving party must first select the "Short Form Discovery" event and then select "Expedite."



(d) Discovery Dispute Conference.

The parties may request that the court conduct a discovery dispute conference by contacting chambers or filing a stipulated one-page motion requesting a discovery dispute conference, which includes suggested dates and times the parties are available ~~for the conference~~.

(e) Deposition ~~Disputes~~Dispute.

This rule does not apply to disputes arising during a deposition. Those disputes, including those that arise under Fed. R. Civ. P. 30(d)(3), may be ~~efficiently~~ resolved by contacting the assigned judge by phone.

(f) Objection to Magistrate Judge's Discovery Ruling.

(1) Fed. R. Civ. P. 72(a) and DUCivR 72-3 govern objections to the magistrate judge's oral or written discovery ruling.

(2) When filing an objection, the party must seek expedited treatment.

DUCivR 54-2 ~~COSTS: TAXATION~~ATTORNEY'S FEES AND BILL OF COSTS ~~AND ATTORNEYS' FEES~~

(a) Attorney's Fees.

(1) Separate from Bill of Costs. A party seeking attorney's fees must file a motion instead of including the request in a bill of costs.

(2) Procedures and Requirements for a Motion for Attorney's Fees.

(A) *Timing*. Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorney's fees must be filed and served within 14 days after:

(i) entry of a judgment; or

(ii) an appellate remand that modifies or imposes a fee award.

(B) *Motion*. The motion must:

(i) comply with DUCivR 7-1(a)(4)(D);

(ii) state the basis for the award;

(iii) specify the total amount claimed; and

(iv) be accompanied by an affidavit identifying—

- each person for whom fees are claimed and a summary of that person's relevant qualifications and experience;
- a detailed description of the person's services rendered, the amount of time spent, the hourly rate charged; and
- any other pertinent supporting information that justifies the award.

(C) *Response and Reply*. The response and reply must comply with DUCivR 7-1(a)(4)(D).

~~(a)~~(b) **Bill of Costs.**

(1) Form. A party seeking taxation of costs must use the bill of costs form on the court's website.

(2) Procedures and Requirements for Bill of Costs.

(A) *Timing*. Within 14 days after the entry of final judgment, the party entitled to recover costs must file a bill of costs on ~~a~~the court's form ~~available from the Clerk of Court, a~~and a supporting memorandum ~~of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The~~ .

(B) *Memorandum*.

(i) The memorandum ~~of costs~~ must ~~(~~:

- comply with DUCivR 7-1(a)(1) and (a)(4)(D)(~~i~~));
- clearly and concisely itemize and describe the costs; ~~(ii) set forth~~
- identify the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and ~~(iii)~~
- include and reference ~~and include~~ copies of applicable invoices, receipts, and disbursement instruments.

~~(i)~~(ii) Failure to itemize and verify costs may result in ~~their~~costs being disallowed. ~~Proof of service upon counsel of record of all adverse parties must be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided by Fed. R. Civ. P. 54(d).~~

~~Objections~~(C) *Objection to Bill of Costs*.

~~Where a~~(i) A party ~~objects~~may object to ~~any item in a bill of~~the requested costs~~, such objections~~ by filing an objection, which must ~~be set forth~~:

- comply with ~~any supporting affidavits~~DUCivR 7-1(a)(1) and ~~documentation and must~~ (a)(4)(D)(i);
- be filed ~~with the court and served on counsel of record of adverse parties~~ within 14 days after ~~filing and~~ service of the bill of ~~costs. The~~ cost; and
- be served on all parties.

(D) *Reply*. Within 14 days of service of the objection, the party requesting the costs may file a reply ~~to specific objections within 7 days of service of the objections~~.

~~**(b) Taxation of Costs.**~~

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

~~(c)~~ (E) ***Judicial Review*.**

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

~~**(d) Attorneys' Fees.**~~

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

~~**(e) Procedures and Requirements for Motions for Attorney's Fees.**~~

~~Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorney's fees authorized by law must be filed and served within 14 days after (i) entry of a judgment; or (ii) an appeals court remand that modifies or imposes a fee award. Such motion must conform to the provisions~~

~~DUCivR 7-1 of these rules. The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.~~

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

DUCivR 55-1 ~~DEFAULTS~~DEFAULT AND DEFAULT ~~JUDGMENTS~~JUDGMENT

(a) ~~The procedure for obtaining~~ Procedure.

To obtain a default judgment, a party must:

(1) request the entry of a default certificate under Fed. R. Civ. P. 55 ~~is (a two-step process: (~~), except in circumstances identified in section (c)(2)(C); and

(2) file a~~) entry of~~ motion for default ~~by the clerk pursuant to~~judgment under Fed. R. Civ. P. 55(~~a); and (~~b~~)~~(1) or (b)(2).

(b) Certificate of Default.

(1) A party requesting an entry of a default ~~judgment, by the clerk when the claim is for a sum certain pursuant to~~certificate under Fed. R. Civ. P. ~~55(b)(1), and by the court in all other instances pursuant to Fed.~~ 55(a) must:~~R. Civ. P.~~ 55(b)(2).

~~**(a) Entry of Default.**~~

(A) ~~To obtain an entry of default pursuant to Fed. R. Civ. P.~~ 55(a), ~~a party must~~ file a ~~"~~motion for entry of default~~" and a proposed order. The motion must describe with specificity the method by which each allegedly defaulting party~~ ;

(B) file an affidavit confirming that the party against whom default is sought—

(i) is not an infant, in military service, or an incompetent person;

(ii) was served with process in a manner authorized ~~by~~in Fed. R. Civ. P. 4~~,~~ and the date of ~~such service. The clerk will independently determine whether~~ service ~~has been effected, that the time for response has expired, and that party against whom default is sought~~ ;

(iii) has failed to plead or otherwise defend~~. Should the clerk determine that entry~~; and

(C) email a proposed certificate of default ~~is not appropriate for~~ in an editable format to utdecf_clerk@utd.uscourts.gov.

(2) A party may file a motion for judicial review of any ~~reason, the clerk will issue an~~ order denying entry of a default~~. An order denying entry of default is reviewable by the court upon motion.~~ certificate.

~~(b)~~(c) Default Judgment.

(1) ~~No motion for default judgment~~ By the Clerk. A party must file a motion for default judgment for a sum certain to obtain a default judgment under Fed. R. Civ. P. ~~be filed unless a~~ 55(b)(1), which includes:

(A) the certificate of default ~~has been~~ ;

(B) supporting affidavit; and

(C) a proposed order, which must also be emailed in editable format to utdecf_clerk@utd.uscourts.gov, that includes:

(i) the party or parties in favor of whom judgment will be entered;

(ii) the party or parties against whom judgment will be entered;

(iii) when there are multiple parties against whom judgment will be entered, whether the judgment should be entered jointly, severally, or jointly and severally; and

(iv) the sum certain or the computation consisting of the principal amount.

(2) By the Court. ~~by the clerk. If a party obtains a certificate of default but does not, within a reasonable time thereafter,~~

In all other cases, a party must file a motion for default judgment under Fed. R. Civ. P. ~~, the court may direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.~~

(A) 55(b)(2), which includes:

(i) the certificate of default; and

(ii) a proposed default judgment, which must also be emailed to the chambers of the assigned judge.

~~(1)~~ In cases against ~~By the Clerk.~~ the United States, its officers, or agencies, the party seeking default judgment must provide evidentiary support that satisfies Fed. R. Civ. P. 55(d).

(B) ~~In cases where a claim is for a sum certain or a sum that can be made certain by computation, a party may request the clerk enter a default judgment against any party other than the United States, its officers, or its agencies, by filing a motion for default judgment under Fed.~~

(C) A court may enter default judgment as a sanction without the clerk entering a certificate of default.

~~(A) R. Civ. P. 55(b)(1). The motion must clearly identify that the party is seeking default judgment from the clerk under Fed. R. Civ. P. 55(b)(1). The motion must be accompanied by a concise brief, a form of judgment, and an affidavit stating: (i) the amount due; (ii) that the defendant has failed to appear; and (iii) that the defendant is not a minor or an incompetent person.~~

~~(i) If the clerk determines that it may not be appropriate to enter a default judgment under Fed. R. Civ. P. 55(b)(1), the clerk may confer with the presiding judge. The presiding~~

judge will advise the clerk whether default judgment by the clerk is appropriate. If such a judgment is not appropriate, the motion for default judgment will be addressed by the presiding judge.

(2) By the Court. In all cases not falling under DUCivR 55-1(b)(1), a party must apply to the court for a default judgment in accordance with Fed. R. Civ. P. 55(b)(2). The motion for default judgment must include the clerk's certificate of default and a proposed form of default judgment. In cases against the United States, its officers, or its agencies, the claimant must establish a claim or right to relief by evidence that satisfies the court in compliance with Fed. R. Civ. P. 55(d). Upon receipt of the motion, the court may conduct further proceedings to enter or effectuate judgment as it deems necessary.

(3) Affidavit Required by Servicemembers Civil Relief Act. All motions for default judgment must be accompanied by an affidavit: (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

DUCivR 56-1 SUMMARY JUDGMENT MOTIONS AND MEMORANDA

(a) Compliance with DUCivR 7-1.

A motion for summary judgment, response, and reply must comply with DUCivR 7-1 in addition to the requirements in this rule.

(b) Motion.

~~A party must address all summary judgment issues in a single motion.~~ If a party files more than ~~one~~1 summary judgment motion at the same time, the court may strike the motions and require that the motions be consolidated into a single motion. A motion for summary judgment must be titled "Motion for Summary Judgment," be supported by an Appendix of Evidence, as described ~~below~~ in 56-1(e), and include the following sections:

(1) Introduction and Relief Requested. A concise statement of each claim or defense for which summary judgment is sought and a clear statement of the relief requested.

(2) Background (Optional). An optional section to provide context for the case, dispute, and motion. If included, this section should be placed between the Introduction and Relief Requested and the Statement of Undisputed Material Facts ~~sections. Factual summaries in the background section~~. The Background need not be limited to undisputed facts and need not cite to evidentiary support.

(3) Statement of Undisputed Material Facts. A concise statement of the undisputed material facts that entitle the moving party to judgment as a matter of law. Only facts necessary to decide the motion should be included in this section. The moving party must cite with particularity the evidence in the Appendix that supports each factual assertion.

(4) Argument. An explanation for each claim or defense, establishing, under the applicable supporting authority, why the moving party is

entitled to judgment as a matter of law. The argument section should include a statement of each claim or defense on which the party is seeking summary judgment and supporting authorities. Any factual ~~citations~~references must cite to the Appendix.

(c) Response.

A response to a motion for summary judgment may be accompanied by an Appendix of Evidence, if applicable, and must include the following sections.

(1) Introduction. A concise ~~summary~~statement explaining why summary judgment should be denied.

(2) Background (Optional). An optional section to provide context for the case, dispute, and motion. If included, this section should be placed between the Introduction ~~section~~ and the Response to Statement of Undisputed Material Facts ~~section. Factual summaries in the background section are~~. The Background need not be limited to undisputed facts and ~~do~~need not ~~need to~~ cite to evidentiary support.

(3) Response to Statement of Undisputed Material Facts. A party must restate only those specific facts the opposing party contends are genuinely disputed or immaterial, providing a concise statement explaining why the fact is disputed or immaterial, and ~~a citation~~cite to the evidence used to refute the fact. The responding party should not restate undisputed facts. If a fact is inadmissible, the responding party must object, as provided in DUCivR 7-1(b), rather than ~~moving~~move to strike the inadmissible fact. ~~Any factual~~Factual citations must reference the appropriate Appendix.

(4) Statement of Additional Material Facts (if applicable). If additional material facts are relevant to show that there is a genuine dispute of material fact, the party must state each additional fact and cite with

particularity to the Appendix that contains the supporting evidence. Do not include duplicate copies of evidence already in the record. Instead, the party must cite to evidence in a previously filed Appendix.

(5) Argument. An explanation for each claim or defense, establishing, under the applicable supporting authority, why summary judgment should be denied. Any factual citations must cite to the appropriate ~~party's Statement of Undisputed Material Facts~~Appendix.

(d) Reply.

The moving party may file a reply. In the reply, a party may cite to evidence that was not previously cited only to rebut a claim that a material fact is in dispute. Otherwise, a reply may not contain additional evidence, and, if it does, the court may disregard it.

(e) Appendix of Evidence.

(1) All evidence cited ~~to~~ in a motion, response, or reply must be compiled in an appendix. Do not include duplicate copies of evidence already in the record. Instead, the party must cite to evidence in a previously filed Appendix.

(2) The Appendix must include:

(A) ~~include~~ a captioned, cover-page index that—

(i) lists each exhibit by number;

(ii) includes a description or title of the exhibit; and

(iii) identifies the source of the exhibit;

(B) ~~include~~ complete copies of all exhibits, including deposition transcripts. For lengthy deposition transcripts, the party may submit the relevant pages of the deposition and the 4 pages before and 4 pages after the sections cited. Minuscript transcripts are permitted, unless otherwise ordered by the court.

(f) Failure to Respond.

~~When~~If a party fails to timely respond, the court may grant the motion without further notice if the moving party has established that it is entitled to judgment as a matter of law.

DUCivR 67-1 ~~RECEIPT AND~~ DEPOSIT OR WITHDRAWAL OF FUNDS IN COURT REGISTRY ~~FUNDS~~

(a) Deposit of Funds in Court ~~Orders Pursuant to~~ Registry.

(1) Unless a statute provides otherwise (e.g., where state law requires the filing of a written undertaking or cost bond in an action against the State or its officers), a party must obtain a court order to deposit money in the court's registry.

(2) The signed order must include:

(A) the statute or rule authorizing the deposit of funds in the court registry, including;

(i) whether the funds must be invested under Fed. R. Civ. P. 67~~.~~ or otherwise; and

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

~~**(a) Provisions for Designated or Qualified Settlement Funds.**~~

(ii) ~~By Motion. Where a party seeks to deposit funds into the court's registry to establish~~if the funds must be invested, whether they qualify as disputed ownership funds either under Fed. R. Civ. P. 22 or 28 U.S.C. § 1335 (interpleader funds);

(B) the United States dollar amount of the deposit; and

(C) when applicable, a copy of the settlement agreement for a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2~~), the~~).

(3) The party must ~~identify~~deliver a copy of the order on the Clerk of Court and the court's Finance Department by email to UTDecf_Forders@utd.uscourts.gov.

(4) The clerk will deposit ~~as such~~the funds with the Treasurer of the United States in ~~a motion for an order to~~ the name and to the credit of this court under 18 U.S.C. § 2041 through depositories designated by the Treasury to accept the deposit on its behalf.

(b) Invested Registry Funds.

(1) Funds deposited under Fed. R. Civ. P. ~~funds~~ 67, and all other funds that must be invested, will be deposited in the ~~court's registry. Such motion also must recommend to the court an outside~~Court Registry Investment System (CRIS). The Administrative Office (AO) of the United States Courts will administer the funds.

~~(1)~~(2) Funds deposited under Fed. R. Civ. P. 22 and 28 U.S.C. § 1335 meet the IRS definition of a disputed ownership fund ~~administrator who will be~~ (DOF) and require tax administration. These funds will be deposited in the DOF within CRIS. The AO is responsible for ~~(i) obtaining the fund employer identification number, (ii) filing all fiduciary tax returns, (iii) paying~~ all ~~applicable taxes, and (iv) otherwise coordinating with the fund depository to ensure compliance with all IRS~~ DOF tax administration requirements ~~for such funds.~~.

~~(1) By Settlement Agreement. Where the parties enter into a settlement agreement and jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the settlement agreement and proposed order must (i)~~

identify the funds as such, and (ii) recommend to the court an outside fund administrator whose responsibilities are set forth in section 67-1(b)(1).

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

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

In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the Clerk of Court may accept an undertaking or bond at the time the complaint is filed in an amount not less than $300. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.

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

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

(1) the length of time the funds should be invested and whether, where applicable, they should be reinvested in the same account or instrument upon maturity;

~~(2) where appropriate, the name(s) and address(es) of the designated beneficiary(ies); and~~

~~(3) such other information appropriate under the facts and circumstances of the case and the requirements of the parties.~~

~~**(d) Service Upon the Clerk.**~~

~~Parties obtaining an order as described in section 67-1(d) of this rule must serve a copy of the order or stipulation personally upon the Clerk of Court or the Chief Deputy Clerk.~~

~~**(e) Deposit of Funds.**~~

~~The clerk will take all reasonable steps to deposit funds that have been placed in the custody of the court into the specified accounts or instruments within 10 business days after having been served with a copy of the order or stipulation as provided in section 67-1(e) of this rule.~~

~~**(f) Disbursements of Registry Funds.**~~

~~Any party seeking a disbursement of such funds must prepare an order for the court's review and signature and must serve the signed order upon the Clerk of Court or Chief Deputy Clerk. The order must include the payee's full name, complete street address, and social security number or tax identification number. Where applicable, such orders must indicate whether, when released by the court, the investment instruments should be redeemed promptly, subject to possible early withdrawal penalties, or held until the maturity date.~~

~~(a)~~(c) ~~**Management and Handling**~~ **Fees.**

~~All funds—including criminal bond money deposited at interest—invested into accounts or instruments that fall under the purview of section 67-1(d) may be subject to routine management~~Registry fees ~~imposed by the financial institution~~will be assessed and deducted ~~at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of the~~

consistent with the miscellaneous fee schedule established by the Judicial Conference of the United States and ~~as set forth in 28 U.S.C. § 1914, the Clerk of Court will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts~~under 28 U.S.C. § 1914.

~~**(g) Verification of Deposit.**~~

~~Any party that obtains an order directing, and any parties stipulating to, the investment of funds by the clerk must verify, not later than 15 days after service of the order as provided by section 67-1(e), that the funds have been invested as ordered or stipulated.~~

~~**(h) Liability of the Clerk.**~~

~~Failure of any party to personally serve the Clerk of Court or Chief Deputy Clerk with a copy of the order or stipulation as specified in section 67-1(e), or failure to verify investment of the funds as specified in section 67-1(i) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.~~

(d) Withdrawal of Funds from Court Registry.

(1) A party seeking to withdraw funds must file a motion consistent with DUCivR 7-1(a)(4)(D) and include a proposed order. The proposed order must also be emailed in an editable format to the assigned judge's chambers.

(2) The proposed order must include the following:

(A) the principal sum initially deposited;

(B) the identity of each payee to receive disbursement; and

(C) full mailing instructions for each disbursement, including complete street address and zip code.

(3) For funds that earned interest while deposited in CRIS, the party sending the proposed order must also email Internal Revenue Service Form W-9 or

W-8BEN (foreign) for each payee to UTDecf_Forders@utd.uscourts.gov. A party must not file the IRS forms with the proposed order.

(4) The party must deliver a copy of the order and, when applicable, the completed IRS forms on the Clerk of Court and the court's Finance Department by email to UTDecf_Forders@utd.uscourts.gov.

(5) For funds that accrued interest of $10.00 or more, the court must include in its final order the amount of interest payable on the principal.

~~(1)~~(6) Disbursements from the registry will be made by check from U.S. Treasury as the Clerk's Office allows or by electronic fund transfer (EFT). Individual registry disbursements totaling $500,000 or more must be issued via EFT.

~~**DUCivR 71.1-1 DEPOSITS IN THE COURT REGISTRY**~~

~~Unless otherwise prohibited by statute, any party seeking to make a Fed. R. Civ. P. 71.1(j) deposit in a property condemnation proceeding may do so without a court order by depositing the funds with the court, subject to the approval of the Clerk of Court. Unless otherwise stipulated by the parties, such funds will be deposited by the Clerk of Court into the U.S. Treasury, and any interest earned while the funds are so deposited will accrue to the United States. The parties may request, on written stipulation, that the Clerk of Court invest the funds in an interest-bearing account or instrument. Under DUCivR 67-1(d), the stipulation must specify the nature of the investment, and the parties must serve a copy of the stipulation personally upon the Clerk of Court or the Chief Deputy Clerk.~~

DUCivR 72-3 ~~RESPONSE TO AN~~ OBJECTION TO AND MOTION TO STAY A MAGISTRATE JUDGE ~~DECISION~~ORDER

~~**(a) Stay of Magistrate Judge Order.**~~

~~A motion for a stay of a magistrate judge order must first be addressed by the magistrate judge who issued the order.~~

~~**(b) Responding to an Objection.**~~

~~Unless otherwise ordered by the district judge, a response need not be filed, and a hearing will not be held, on an~~**(a) Objection.**

An objection to a magistrate ~~judge's~~judge's order ~~issued~~or report and recommendation filed under~~:~~

Fed. R. Civ. P. 72(a) ~~and 28 U.S.C. § 636(b)(1)(A); or~~ or (b) may not exceed 15 pages or 4,650 words.

~~(1) Fed. R. Civ. P. 72~~**(b)** ~~and 28 U.S.C. § 636(b)(1)(B).~~

Response, Ruling on the Objection~~.~~, and Proposed Order.

(1) Response. Unless the district judge orders otherwise, a response need not be filed and a hearing will not be held on an objection. If the district court orders a response and sets a briefing schedule, the response may not exceed 15 pages or 4,650 words.

(2) Ruling. The district judge may ~~deny~~overrule the objection by written order at any time but may not ~~grant~~sustain it without ~~first~~ giving the opposing party an opportunity to ~~brief the matter. If the district judge has not overruled the objection or has not set a briefing schedule within 14 days after the objection was filed, the~~file a response.

(3) Proposed Order. The non-~~moving~~objecting party must email ~~to the district judge a~~ a proposed order in ~~Word~~an editable format ~~denying the objection~~to the district judge's chambers if the district judge does not overrule the objection within 14 days after the objection is filed.

(c) Motion to Stay a Magistrate Judge Order.

If a party files a motion to stay the magistrate judge's order, the magistrate judge who issued the order will rule on the motion.

DUCivR 72-4 CONSENT TO THE JURISDICTION OF THE MAGISTRATE JUDGE

(a) Civil Consent Jurisdiction of Magistrate Judges.

Under 28 U.S.C. § 636(c), a magistrate judge is designated to exercise jurisdiction over a civil jury or nonjury case after the relevant parties consent to the assignment. -After obtaining consent, the magistrate judge is authorized to conduct all proceedings and enter judgment in the matter.

(b) Assignment of Civil Case to a Magistrate Judge at Case Opening.

(1) Except as otherwise restricted under DUCivR 72-4(b)(2), the Clerk's Office will randomly assign a civil matter to a magistrate judge if the matter:

(A) is brought by an unrepresented party who is not incarcerated;

(B) seeks judicial review of decisions of the Commissioner of the Social Security Administration (Social Security Appeal); or

(C) is an eligible civil case randomly assigned under DUCivR 83-2(a).

(2) The Clerk's Office will not assign a civil matter to a magistrate judge if the case:

(A) includes a request for immediate injunctive or similar extraordinary relief when a standalone motion for the relief accompanies the complaint or is included in the complaint;

(B) includes a claim for relief ~~filed~~ under 28 U.S.C. §§ 2241, 2254, or 2255;

(C) is an in rem or civil forfeiture action involving personal or real property;

(D) is an appeal from the bankruptcy court to the district court;

(E) includes a claim for relief brought by a relator under the False Claims Act, 31 U.S.C. §§ 3729, et seq.;

(F) includes a claim or defense related to the adjudication of, the infringement of, or rights to, a patent;

(G) is one in which all district judges have a conflict; or

(H) is one that an assigned district judge has previously invested considerable time.

(c) Notification of Availability of a Magistrate Judge.

(1) Notification. In every eligible civil case, the Clerk's Office will give notice to each relevant party that a magistrate judge may exercise jurisdiction by sending a copy of the Consent to the Jurisdiction of Magistrate Judge form (Consent Form).

(2) Sending the Consent Form. For cases identified in DUCivR 72-4(b)(1), the Clerk's Office must send the Consent Form to the plaintiff when the complaint is filed and to every other relevant party when the party appears or otherwise responds. When a new party is added to a civil case after consent to a magistrate judge has been obtained, the Clerk's Office will send the Consent Form to the newly added party.

(3) Returning the Consent Form.

(A) Deadline. A party has 21 days from the date the Clerk's Office sends the Consent Form to that party to return it to the Clerk's Office.

(B) Procedure. A party must not electronically file the Consent Form in the case. The Consent Form must be confidentially returned to the Clerk of Court, either by emailing the form in PDF format to consents@utd.uscourts.gov or by mailing it to the address provided in the form.

(4) Filing the Form After Consent is Obtained. If each relevant party consents to the jurisdiction of a magistrate judge, the consent clerk will file the Consent Form.

(d) Case Assignment After the Relevant Parties Consent or Decline to Consent.

(1) Consent Obtained.

(A) Case Assigned to a Magistrate Judge. In a case initially assigned to a magistrate judge in which the relevant parties consent, the Clerk's Office will assign the case to the magistrate judge as the presiding judge.

(B) Case Assigned to a District Judge. In a case initially assigned to a district judge, but eligible to have a magistrate judge preside after consent, in which the relevant parties consent, the Clerk's Office will assign the case to:

(i) the referred magistrate judge; or

(ii) a randomly selected magistrate judge if one has not been referred.

(2) Consent not Obtained.

(A) Case Assigned to a Magistrate Judge. In a case initially assigned to a magistrate judge under DUCivR 72-4(b)(1)(A) or (B) in which consent is not obtained, the Clerk's Office will randomly assign the case to a district judge and, unless a district judge directs otherwise, enter an automatic referral under 28 U.S.C. § 636(b)(1)(B) to the magistrate judge who was initially assigned. In all other cases initially assigned to a magistrate judge in which consent is not obtained, the Clerk's Office will randomly assign the case to a district judge and, unless the district judge directs otherwise, enter an automatic

referral under 28 U.S.C. § 636(b)(1)(A) to the magistrate judge who was initially assigned.

(B) Case Assigned to a District Judge. In a case initially assigned to a district judge, in which consent is not obtained, the case remains assigned to the district judge. Any existing referral to a magistrate judge is unaffected.

(e) Confidentiality.

A party may decline to consent without negative consequences. If any party declines to consent or fails to timely return the Consent Form, the identity of that party will not be communicated to any judge.

(f) Authority of the Magistrate Judge Pending Consent.

Until all relevant parties consent, a magistrate judge's assignment as presiding judge is a referral from the Chief Judge under 28 U.S.C. § 636(b)(1)(B).

DUCivR 81-2 REMOVED ACTIONS

(a) Notice.

(1) Notice of Removal. To remove an action from state court, the removing party must file a Notice of Removal that complies with 28 U.S.C. § 1446(a). The Notice of Removal must include:

(A) a short and plain statement of the grounds for removal signed under Fed. R. Civ. P. 11;

(B) the additional content required in DUCivR 81-2(a)(2), if the court's jurisdiction for removal is based on diversity of citizenship;

(C) a certification that a copy of all processes, pleadings, and orders served on the removing party are filed in the federal case as required by this rule and 28 U.S.C. § 1446(a), and as permitted by 28 U.S.C. § 1447; and

(D) the attachments required in DUCivR 81-2(b).

(2) Additional Content Required in Notice of Removal in Diversity Cases.

(A) If the court's jurisdiction is based on diversity of citizenship, irrespective of whether service of process has been effectuated on all parties, the Notice of Removal must include:

(i) in the case of each individual named as a party, that party's residence and domicile and any state or other jurisdiction of which that party is a citizen for purposes of 28 U.S.C. § 1332;

(ii) in the case of each party that is a partnership, limited liability partnership, limited liability company, or other unincorporated association, like information as required in section 81-2(a)(2)(A)(i) ~~above~~ for all its partners or members, as well as the state or other jurisdiction of its formation;

(iii) in the case of each party that is a corporation, its state or other jurisdiction of incorporation, principal place of business, and any state or other jurisdiction of which that party is a citizen for purposes of 28 U.S.C. § 1332;

(iv) in the case of an assigned claim, corresponding information for each original owner of the claim and for each assignee;

(B) the date on which each party was served; and

(C) the removing party must state in the Notice of Removal if any of the information above is unknown. Within 21 days after removal, the removing party must file an amended notice containing the omitted information.

(b) Attachment of State Court Record.

The court will not upload the state court record to the docket. At the time of removal, the removing party must file the state court record as separate attachments to the Notice of Removal, including:

(1) a copy of the operative complaint;

(2) a current copy of the state court docket sheet;

(3) a copy of the operative scheduling order or notice of event due dates, if available; and

(4) a single attachment containing all pleadings, motions, orders, and other relevant filings, organized in chronological order by the state court filing date, and if applicable, consistent with DUCivR 5-2 and 5-3.

(c) Pending State Court Motions.

(1) Disposition of Pending State Court Motions. All pending motions and other requests directed to the state court are automatically denied without prejudice on removal.

(2) Obligation to Refile. If a party seeks a decision on a motion that was automatically denied under DUCivR 81-2(c)(1), the party must refile the motion, citing to relevant federal law and state if expedited consideration is requested. DUCivR 7-1 governs the motion.

(d) Scheduling Order After Removal.

(1) Unless stipulated by the parties and ordered by the court, all deadlines contained in the state court scheduling order or notice of event due dates are automatically vacated on removal.

(2) The parties must conduct an Attorney Planning Meeting under Fed. R. Civ. P. 26(f) within 14 days after the time to file a motion to remand has expired or the motion has been denied, whichever occurs last.

~~(3)~~ The ~~plaintiff~~parties must file the ~~Attorney Planning Meeting Report~~appropriate motion within ~~5~~21 days after the ~~meeting.~~

(3) ~~At the same~~ time to file a motion to remand has expired or the motion has been denied, whichever occurs last, as follows:

(A) If the parties reach an agreement on all issues in the Attorney Planning Meeting Report, they must file a Stipulated Motion for Scheduling Order and attach the jointly signed Attorney Planning Meeting Report ~~is filed, the plaintiff~~. They must also email a ~~proposed scheduling order~~stipulated Proposed Scheduling Order in editable format ~~(e.g., WordPerfect or MS Word)~~ to the assigned judge in the case, or if an order referring the case to a magistrate judge has been entered, to the referred magistrate judge.

(B) If the parties do not agree on all issues in the Attorney Planning Meeting Report, they must file a Motion for Scheduling Conference and attach the Attorney Planning Meeting Report. They must also email their respective Proposed Scheduling Orders in editable

format to the assigned judge in the case, or if an order referring the case to a magistrate judge has been entered, to the referred magistrate judge.

DUCivR 83-1.2 ATTORNEYS - ANNUAL REGISTRATION

(a) General Requirement.

By July 1 each year, an attorney seeking to maintain active status must pay the annual registration fee, in an amount determined by the court, and register using the court's CM/ECF system. An attorney who maintains active status must:

(1) comply with the Local Rules of Practice, ECF Procedures Manual, Utah Rules of Professional Conduct, and Utah Standards of Professionalism and Civility;

(2) register to efile and receive electronic notifications of case activity; and

(3) agree to accept a reasonable number of pro bono assignments from the court, except when employed by a government agency that precludes accepting pro bono assignments.

(b) Categories of Membership.

(1) Active Attorney. An attorney who is an active member and in good standing of the Utah State Bar and actively practices in this district.

(2) Federal Attorney. An attorney who is employed by, or on special assignment for, the United States, its agencies, or a Federal Public Defender's Office and is an active member and in good standing of any state bar or the District of Columbia and actively practices in this district.

(3) Inactive Attorney. An attorney who is retired or no longer practices in this district but wants to maintain membership in inactive status. An inactive attorney may reactivate membership at any time by paying the current registration fee.

(c) Procedure to Change Status to Inactive.

By July 1 in the year requesting to go inactive, an attorney seeking to become an inactive member of this court's bar must request inactive status using the court's CM/ECF system.

(d) Failure to Register.

(1) An attorney who does not register online by July 1 of each year will have ~~the~~their membership status changed to "registration lapsed" and will be unable to electronically file documents as of July 2.

(2) To reactivate ~~a~~ membership in this court's bar, an attorney must pay a ~~$200~~ reinstatement fee in an amount determined by the court.

(e) Attorney Contact Information.

An attorney who is a member of this court's bar, including an inactive attorney, must maintain valid and current contact information—including a mailing address, email address, and telephone number—in PACER.

DUCivR 83-1.3 ATTORNEYS ~~– APPEARANCES BY ATTORNEYS~~ – APPEARANCE AND CONTACT INFORMATION

~~**(a) Attorney of Record.**~~

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

(a) Appearance.

(1) An attorney appears on behalf of a party by appearing in court; filing a notice of appearance; or signing a pleading, motion, or other paper, including a waiver of service.

(2) To appear in a case, an attorney must be admitted to practice in this district under DUCivR 83-1.1.

(b) Limited Appearance.

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

(A) filing a pleading or other paper;

~~(B)~~ acting as counsel for a specific motion~~;~~

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

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

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

(2) ~~Before commencement of the limited appearance the~~Notice. The attorney must file a Notice of Limited Appearance that:

(A) is signed by the attorney and ~~the~~ party~~. The Notice must specifically describe~~, except if the party is incarcerated and the attorney has accepted a pro bono appointment at the court's request;

(B) describes the purpose and scope of the appearance; and ~~state~~

~~(F)~~(C) states that the party remains responsible for all matters not specifically described in the ~~Notice. The clerk must enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Fed. R. Civ. P. 11.~~notice.

~~(2)~~(3) Clarification. Any party may move to clarify the description of the purpose and scope of the limited appearance.

~~(3)~~(4) Party's Responsibility. A party on whose behalf an attorney ~~enters~~files a notice of limited appearance will ~~continue to~~ receive notice of all filings with the court and will remain responsible for all matters not specifically described in the ~~Notice~~notice.

~~(4)~~(5) Withdrawal. An attorney who has entered a notice of limited appearance ~~under this section~~ must ~~file a notice with~~ follow the ~~court informing the court when the purpose and scope of the limited appearance have been fulfilled. Failure~~procedures to ~~do so will constitute the attorney's consent~~

~~to continue such representation of the party on whose behalf the notice of limited appearance was filed~~withdraw in DUCivR 83-1.4.

(c) ~~Pro Se~~ Self-Representation.

(1) Individuals may represent themselves ~~in the court. No~~.

(2) A corporation, association, partnership, or other artificial entity ~~may appear pro se and~~ must be represented by an attorney who is admitted ~~to practice in this court.~~under DUCivR 83-1.1.

(3) A federally recognized Indian tribe may seek exemption from section (c)(2) by filing a motion consistent with DUCivR 7-1(a)(4)(D).

(d) Appearance by a Party.

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

(e) Change of Contact Information.

(1) Active and inactive attorneys must~~:~~ maintain valid and current contact information in PACER, including mailing address, email address, and telephone number.

~~(1) represent such~~An unrepresented party ~~in the action;~~

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

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

~~**(e) Notification of Clerk.**~~

(2) ~~In all cases, counsel and parties appearing pro se~~ must notify the Clerk's Office immediately of any change in address, email address, or telephone number using the form available on the court's website.

DUCivR 83-1.4 ATTORNEYS ~~-~~ SUBSTITUTION AND WITHDRAWAL ~~OF ATTORNEY~~

(a) Substitution ~~of Counsel~~.

An attorney~~, who is an active member of this court,~~ admitted to practice under DUCivR 83-1.1 may replace ~~another~~an attorney ~~of record~~ in a pending case without leave of court by filing a Notice of Substitution ~~of Counsel~~. The notice must ~~(i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and (v)~~ :

(1) verify that the attorney entering the case is aware of and will comply with all pending deadlines ~~in~~;

(2) identify the ~~matter. Upon~~party who the ~~filing of the notice, the withdrawing~~ attorney ~~will~~ is representing;

(3) be ~~terminated from~~signed by the ~~case, and the new~~newly appearing attorney ~~will~~ ; and

~~(1)~~(4) be ~~added as counsel of record~~served on all parties.

(b) Withdrawal ~~When the Party Continues to Be Represented by Counsel~~.

(1) Leave of Court Not Required. An attorney may withdraw ~~from representing a party~~ without leave of court if the party continues to be represented by ~~other counsel~~ another attorney who has ~~already~~ entered an appearance. ~~The~~To withdraw, the attorney ~~seeking to withdraw~~ must file a Notice of Withdrawal of Counsel ~~stating~~ that ~~the party continues to be represented by counsel who is aware of the pending deadlines and trial dates. Upon filing the notice, the Clerk's Office will terminate the attorney from the case.~~ states:

~~**(c) Withdrawal When** **the** **Party Will Be Left Without Representation.**~~

(A) ~~No~~party continues to be represented by an attorney who has appeared under DUCivR 83-1.3; and

(B) the continuing attorney is aware of and will ~~be permitted to~~ comply with all pending deadlines, hearings, and trial dates.

(2) Leave of Court Required. Except as allowed in section (b)(1), an attorney may not withdraw ~~as attorney of record~~ in ~~any~~a pending action~~, thereby leaving a party~~ without ~~representation, except upon submission of~~leave of the court. The attorney seeking to withdraw must file a motion under DUCivR 7-1(a)(4)(D) that includes:

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

~~(B) A proposed Order Granting Motion to Withdraw as Counsel in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within 21 days after entry of the order, or within the time otherwise required by the court, the unrepresented party must file a notice of appearance, (ii) that no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii)~~

~~that a party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to sanctions, pursuant to Fed. R. Civ. P. 16(f)(1), including but not limited to dismissal or default judgment.~~

~~(2) No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the Motion to Withdraw as Counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes a certification signed by the moving attorney's client indicating that the party is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.~~

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

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

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

(A) ~~Without Client's Consent. When the moving attorney has not obtained the written consent of the client, the motion must contain (i) certification that the client has been served with a copy of the motion to withdraw, (ii) a description of~~ the reason for withdrawal or a statement that disclosing the reason for withdrawal would violate the rules of professional conduct;

(B) the party's last-known contact information including mailing address, email address, and telephone number or an explanation why the information is unavailable;

(C) a statement of whether the party does or does not consent to the withdrawal;

(D) the status of the case including any pending motions, the dates and times of any scheduled ~~court proceedings,~~hearings, and requirements under any existing court orders~~, and any possibility of sanctions; and~~ or rules;

(E) a certification signed by the party indicating they are eligible to proceed with the trial as scheduled without an attorney, if a trial date has been scheduled and an attorney is unavailable to appear;

~~(A)~~(F) a certification that the motion was filed and served on all parties or, if ~~appropriate, (iii) certification by the moving attorney that the client cannot be located or, for any other reason,~~ applicable, an explanation why a party cannot be notified ~~regarding~~about the motion~~ to withdraw.~~; and

(G) a proposed order for the court, available on the website, attached as an exhibit, that notifies the party who will be without an attorney:

(i) that within 21 days, they must retain an attorney or proceed without an attorney and file a Notice of Appearance;

(ii) that if the party is a corporation, association, partnership, or other artificial entity, it must be represented by an attorney who is admitted under DUCivR 83-1.1 and that attorney must file a Notice of Appearance; and

(iii) that a party who fails to retain an attorney or file a Notice of Appearance may be subject to sanctions including entry of a default judgment or an order of dismissal.

(3) Withdrawal of Limited Appearance.

(A) An attorney who has entered a limited appearance under DUCivR 83-1.3 must file a Notice of Withdrawal after the purpose of the limited appearance has been fulfilled.

(B) An attorney seeking to withdraw before the conclusion of the purpose of the limited appearance must proceed under section (b)(2).

(C) Failure to file a Notice of Withdrawal will constitute the attorney's consent to continue appearing on the party's behalf as if a general appearance had been filed.

~~(c)~~(c) **Procedure After Entry of an Order of Withdrawal.**

~~(1) Upon entry of an order granting a motion to withdraw, the~~ Stay. The action ~~must be~~is stayed ~~until~~for 21 days after ~~entry of~~the court grants the ~~order~~motion for withdrawal, unless ~~otherwise ordered by~~ the court~~. The court may in its discretion shorten~~permits the ~~21-day stay period.~~

~~(2)~~(1) ~~The court will enter~~unrepresented party to waive the ~~order and serve it on all parties and~~time requirement or the ~~withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule~~court orders otherwise.

~~(3)~~(2) Appearance. Within 21 days after ~~entry of~~ the ~~order,~~court grants the motion or within the time ~~otherwise required by~~ the court has ordered:

(A) ~~any~~an attorney must file an appearance on behalf of an individual whose attorney has withdrawn or, if the individual intends to

proceed without an attorney, the individual must file a ~~notice of pro se appearance or new counsel~~Notice of Appearance; and

~~(A)~~ an attorney must file an appearance on ~~that party's behalf.~~

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

~~(4)~~(3) Scheduling Conference. After expiration of the stay ~~period, either~~or as the court has ordered, a party may request a scheduling conference or submit a proposed amended scheduling order.

(d) Sanction.

An unrepresented party who fails to appear within 21 days after entry of the order, or within the time ~~otherwise required by~~ the court requires, may be ~~subject to sanction pursuant~~sanctioned under to Fed. R. Civ. P. 16(f)(1), including ~~but not limited to dismissal or~~ entry of a default judgment or an order of dismissal.

DUCivR 83-1.~~5.1~~7 ATTORNEY ~~DISCIPLINARY ACTIONS - GENERAL PROVISIONS~~DISCIPLINE

~~(a)~~ Standards of Professional Conduct~~.~~

(a) ~~All attorneys practicing before this court, either as members of the bar of this court or by Pro Hac Vice admission, must comply with the rules of practice adopted by this court~~ and ~~with the~~ Jurisdiction.

An attorney who is or has been a member of the court's bar or admitted pro hac vice is subject to the Local Rules of Practice, the Utah Rules of Professional Conduct ~~as revised, amended~~, and ~~interpreted by this court.~~

~~(b) Grounds for Discipline.~~

~~Any attorney who appears in this court or is a member of the bar of the court is subject to the~~ the court's disciplinary jurisdiction.

(b) Initiation of ~~the court.~~a Disciplinary ~~proceedings~~Action.

A disciplinary action may be initiated ~~in this court~~ against an attorney who has been:

(1) disciplined by the Utah State Bar, the Tenth Circuit Court of Appeals, or ~~other jurisdictions;~~ a court or bar association of another jurisdiction;

(2) the subject of an attorney misconduct complaint that is signed under penalty of perjury (a court-provided complaint form is preferred but not required);

(3) convicted of a ~~serious~~ crime, ~~which includes, without limitation, any~~ including—

(i) a felony; or ~~any~~

(ii) a misdemeanor ~~which~~that reflects adversely on the attorney's ~~honesty, trustworthiness or~~ character and fitness ~~as an attorney;~~; or

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

(c) ~~the subject~~Notice of Discipline or Conviction.

An attorney who has been disciplined by another court or bar association or convicted of a crime other than a minor traffic offense must immediately notify, in writing, the Clerk of Court. The notice must include a copy of the discipline order or conviction. The Clerk of Court may also receive notice of discipline by another court or bar association. The Clerk of Court will maintain these documents in a confidential file in CM/ECF.

(d) Commencement of a Disciplinary Action.

(1) Reciprocal Discipline.

(A) After receiving notice of discipline under section (c), the Clerk must serve on the attorney:

(i) a copy of the notice if the attorney did not provide the notice; and

(ii) an order, to become effective 28 days after the date of service, imposing reciprocal discipline in this court.

(B) A motion for relief from the clerk's order may be filed within 14 days of the date of service of the clerk's order. Failure to file a motion for relief is deemed a waiver. The motion must succinctly identify the facts, relevant authority, and argument supporting the relief from the order of reciprocal discipline. The effect of the clerk's order is stayed until the disciplinary panel, identified in section (f), orders otherwise. The panel may schedule an evidentiary hearing upon a showing of good cause. If an evidentiary hearing is held, the panel may enter interim orders, pending the hearing, as justice may require. If a hearing is not scheduled, the panel may affirm the clerk's order or take other action.

(2) Attorney Misconduct Complaint or Criminal Conviction.

(A) After receiving an attorney misconduct complaint~~; or~~ or notice of a criminal conviction, the clerk will transmit a copy to the panel with a recommendation whether to issue an order to respond.

~~(1) otherwise charged with violation of an ethical or professional standard of conduct.~~

(B) The panel may issue an order to respond requiring the attorney to explain why the court should not restrict the attorney's ability to practice.

(C) The clerk may serve the order to respond on the attorney by email at an identified email address. If the email is returned as undeliverable, the Clerk must serve the order to respond by certified mail, return receipt requested, on the attorney at an identified mailing address.

(D) A response must be filed within 21 days after service of the order to respond.

(E) After receipt of the response or the expiration of 21 days, the panel must review the documents and may:

(i) dismiss the complaint;

(ii) refer the action to a more appropriate jurisdiction;

(iii) impose no discipline;

(iv) impose interim or final discipline;

(v) refer the action to the committee identified in section (f) for review and recommendations; or

(vi) set the matter for an evidentiary hearing before a trier of fact.

(3) Judicial Referral.

A judicial officer may make a referral in writing to the panel or any other appropriate authority regarding an attorney's misconduct. The procedure for addressing a judicial referral is the same as in section (d)(2).

(e) Discipline.

Discipline may include:

(1) a public or private reprimand;

(2) conditions for continuing to practice law in this jurisdiction;

(3) probation;

(4) suspension from the right to practice in this court;

(5) disbarment; or

(6) other discipline as deemed appropriate.

(f) Disciplinary Authorities, Procedures, and Record Requests.

(1) Authorities.

~~(c)~~ **(A) Disciplinary Panel.**

The Chief Judge ~~will~~ must appoint a panel of 3 judicial officers to constitute the Panel and designate ~~three judges as the Disciplinary Panel (Panel) for the court. The Panel members may be active or senior district judges, magistrate judges, or bankruptcy court judges.~~1 to serve as the chair. The Panel has jurisdiction over all matters relating to the discipline of attorneys, including disbarment and suspension. The Chief Judge ~~will~~may designate ~~one Panel~~additional judicial officers to serve as alternates when a member ~~as Panel Chair.~~is unable to serve. If a ~~Panel~~ member ~~must recuse from a disciplinary matter~~is unable to serve, the remaining members have authority to proceed without the participation of ~~that judge, and one of them will act as Panel Chair. Further, the Chief Judge may appoint a judge to act as a pro tem member of the~~

~~Panel.~~the unavailable member. If the unavailable member is the chair, the remaining members will select a substitute chair.

~~**(d) Disciplinary Committee.**~~

~~The Panel must appoint five members of the court's bar to serve as a Committee on the Conduct of Attorneys and must designate one member to serve as Chair. The members will serve staggered three-year terms and may be reappointed. Members will not be compensated but may be reimbursed for incidental expenses.~~

~~**(e) Clerk of Court.**~~

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

~~**(f) Confidentiality.**~~

~~If an attorney has been publicly disciplined by another jurisdiction or convicted of a serious crime as defined in section 83-1.5.1(b)(2), the discipline file will be a public record. The file of other disciplinary matters will remain confidential until the Panel orders the file or parts of the file to be publicly available. All suspension and disbarment orders, including interim suspension orders, must be distributed to the judges of the court by the Clerk of Court.~~

~~**(g) Waiver and Consent.**~~

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

~~**(h) Interim Suspension.**~~

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

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

~~Any attorney under interim suspension for having been convicted of a serious crime as defined in section 83-1.5.1(b)(2) may apply to the Panel for reinstatement upon the filing of a certificate demonstrating that the conviction has been reversed. This reinstatement will not, in and by itself, terminate the pending disciplinary proceeding.~~

~~**(j) Participant Immunity.**~~

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

(B) Committee. The panel may appoint a committee of attorneys to advise and assist it. At the panel's direction, the Committee may investigate complaints or motions for reinstatement, prepare a report and recommendation, or serve as a trier of fact.

(C) Investigator. The panel may appoint an investigator to interview witnesses, gather evidence, and prepare reports or summaries.

(D) Hearing Officer. The panel may appoint a neutral hearing officer to conduct an evidentiary hearing. The hearing officer must be a judicial officer or member of the court's bar.

(E) Examiner. The panel may appoint a member of the committee or another attorney to present evidence in support of discipline.

(F) Clerk of Court. The Clerk of Court will process a disciplinary matter as stated in this rule.

(2) Disciplinary Authority Immunity.

Disciplinary authorities are immune from claims arising out of disciplinary actions.

(3) Hearing.

The trier of fact, which may be the panel that may include a member of the committee, may permit discovery, receive testimony, and consider other evidence as deemed relevant or material. The Federal Rules of Evidence do not apply.

(4) Records.

(A) Public. An order of discipline is a public record and will be reflected in the court's public attorney directory, unless ordered otherwise.

(B) Confidential. All other disciplinary records are confidential.

(C) Record Requests. A person may file a request to obtain copies of disciplinary records with the Clerk of Court. The panel may authorize the clerk to provide copies of the records. If the panel denies the request, the person may file an objection within 14 days. The Chief Judge will address the objection.

(g) Reinstatement.

(1) An attorney who has been disciplined in this court may file a motion for reinstatement in the original disciplinary action. Reinstatement in this court is not automatic after reinstatement in another jurisdiction.

(2) The motion must succinctly:

(A) identify disciplinary and reinstatement actions taken in any jurisdiction; and

~~(A)~~(B) explain why reinstatement is appropriate in this court and will not be detrimental to the integrity of the bar of this court, the interests of justice, or the public.

DUCivR 83-1.5.2 RECIPROCAL DISCIPLINE

(a) Notice to the Court.

Any member of the bar of this court who has been disciplined by another jurisdiction must notify the clerk of that discipline by sending a copy of the disciplinary order to the clerk. The clerk may also receive notice of disciplinary action from the disciplining jurisdiction. The clerk will assign the matter a disciplinary case number, review the order, review the attorney's membership status with the court, and transmit the matter to the Panel Chair for review and action pursuant to section 83-1.5.2(b).

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

(b) Procedure.

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

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

(1) impose different or no discipline;

(2) impose reciprocal discipline;

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

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

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

DUCivR 83-1.5.3 CRIMINAL CONVICTION DISCIPLINE

(a) Notice to the Court.

Any member of the bar of this court must notify the clerk of any conviction of a serious crime as defined by DUCivR 83-1.5.1(b)(2). The clerk may also receive notice of conviction from other sources. The clerk will assign the matter a disciplinary case number, review the conviction, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section 83-1.5.3(b) of this rule.

(b) Procedure.

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

(1) impose no discipline;

(2) impose discipline;

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

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

(c) Sanctions.

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

(1) disbarment;

(2) suspension;

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

~~(4) mandatory continuing legal education;~~

~~(5) public reprimand;~~

~~(6) private reprimand; or~~

~~(7) other discipline as deemed appropriate.~~

~~**DUCivR 83-1.5.4 REFERRAL BY A JUDICIAL OFFICER**~~

~~**(a) Referral.**~~

~~A judicial officer may make a referral in writing to the Panel recommending that an attorney be subject to discipline. The referral must be forwarded to the clerk who will assign a disciplinary case number and refer the matter to the Panel chair for review and action pursuant to section 83-1.5.4(b) of this rule.~~

~~**(b) Procedure.**~~

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

~~(1) dismiss the referral;~~

~~(2) impose discipline;~~

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

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

~~**(c) Sanctions.**~~

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

~~(1) disbarment;~~

~~(2) suspension;~~

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

~~(4) mandatory continuing legal education;~~

~~(5) public reprimand;~~

~~(6) private reprimand; or~~

~~(7) other discipline as deemed appropriate.~~

~~**DUCivR 83-1.5.5 ATTORNEY MISCONDUCT COMPLAINT**~~

~~**(a) Complaint.**~~

~~Any person with a complaint based upon conduct directly related to practice in this court against an attorney who is either a member of the bar of this court or has been admitted to practice Pro Hac Vice, must sign and submit the complaint in writing and under oath. The complaint must be in the form prescribed by the court and available from the clerk. The clerk will review the complaint, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section 83-1.5.5(b) of this rule.~~

~~**(b) Procedure.**~~

~~The Panel will review the complaint and determine whether the complaint should be served or should be dismissed as frivolous or for asserting a claim which is not disciplinary in nature. If the complaint is dismissed, the complainant will be informed by mail. The Panel must issue an order to show cause for other complaints. The clerk will serve the complaint and order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have 20 days to respond. At the conclusion of the response period for the order to show cause, the Panel must review any response received from the attorney. The Panel may then:~~

~~(1) dismiss the complaint;~~

~~(2) impose discipline;~~

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

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

~~**(c) Sanctions.**~~

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

~~(1) disbarment;~~

~~(2) suspension;~~

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

~~(4) mandatory continuing legal education;~~

~~(5) public reprimand;~~

~~(6) private reprimand; or~~

~~(7) other discipline as deemed appropriate.~~

~~DUCivR 83-1.5.6 COMMITTEE ON THE CONDUCT OF ATTORNEYS~~

~~(a) Procedure.~~

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

~~(b) Investigation.~~

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

~~(c) Report and Recommendation.~~

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

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

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

DUCivR 83-1.5.7 EVIDENTIARY HEARING

(a) Appointment of Hearing Examiner.

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

(b) Appointment of a Judicial Officer.

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

(c) Appointment of Prosecutor.

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

(d) Panel Hearing.

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

(e) Hearing Process.

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

~~(f) Report and Recommendation.~~

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

~~(g) Fees and Costs.~~

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

~~**DUCivR 83-1.5.8 REINSTATEMENT**~~

~~**(a) Reinstatement from Reciprocal Discipline Matters.**~~

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

~~**(b) Reinstatement from Other Disciplinary Orders.**~~

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

~~**(c) Contents of the Petition.**~~

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

~~**(d) Procedure.**~~

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

DUCivR 83-1.~~6~~5 ATTORNEYS - STUDENT PRACTICE RULE

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

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

(b) Law Student Eligibility.

An eligible law student must:

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

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

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

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

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

seek reimbursement from the client for the services rendered by the student.

(c) Responsibilities of Supervising Attorney.

A supervising attorney must:

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

(2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided on the court's website;

(3) File with the clerk a consent agreement to supervise the student;

(4) File with the clerk the law school certification as required by section 83-1.6(b)(3);

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

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

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

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

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

(d) Scope of Representation.

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

(1) Appear as assistant counsel in civil and criminal proceedings on behalf of any client, including federal, state, or local government bodies provided

that the written consent of the client and the supervising attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.

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

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

(e) Law School Certification.

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

DUCivR 83-1.~~7~~6 CONDUCT OF AN UNREPRESENTED PARTY

(a) A party proceeding without an attorney (unrepresented party or pro se party) is obligated to comply with:

(1) the Federal Rules of Civil Procedure;

(2) these Local Rules of Practice;

(3) the Utah Standards of Professionalism and Civility; and

(4) other laws and rules relevant to the action.

(b) An unrepresented party must immediately notify the Clerk's Office in writing of any name, mailing address, or email address changes.

DUCivR 83-5 CUSTODY, FILING, AND ~~DISPOSITION~~DISPOSAL OF HEARING OR TRIAL EXHIBITS

~~**(a) Prior to Trial.**~~

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

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

(a) Custody of Exhibits.

(1) Exhibits Returned to the Offering Party.

(A) Unless the court orders otherwise, the courtroom deputy will return exhibits in their custody at the conclusion of a hearing or trial to the offering party.

(B) The courtroom deputy will prepare a receipt that identifies the returned exhibits when the offering party takes custody. The offering party must sign and return the receipt to the courtroom

deputy and take possession of the exhibits. The courtroom deputy will docket the signed receipt.

~~(b)~~ Offering Party's Obligation During ~~Trial.~~

~~(1)~~(2) ~~Custody of the Clerk.~~ Appeal. Unless the court orders otherwise, ~~all~~the offering party must keep any exhibits ~~that are~~, whether admitted ~~into evidence during trial and that are suitable for filing and transmission~~or offered-and-not-admitted, and must deliver them to the appellate court ~~of appeals as a part of the record on~~ , if required. This obligation remains in effect until any appeal~~, must be placed in the custody of the Clerk of Court~~ is resolved or the time for appeal has expired.

(3) ~~Custody of the Parties. Unless the court otherwise orders, all other~~Access to Exhibits During the Appeal. For preparation of the record on appeal, a party must make available all original exhibits, or copies, to any other party on request or court order.

(4) Exhibits Ordered to Remain in Custody of the Clerk. When the court has ordered the Clerk of Court to retain custody of an exhibit, the Clerk's Office must retain custody until any appeal is resolved or the time for appeal has expired.

(b) Retention of Exhibits.

(1) Original Exhibits.

The offering party must retain the original exhibit.

(2) Delivery of Exhibits for Retention.

(A) Within 14 days after the docketing of the court's witness and exhibit list, each party must deliver a digital storage device containing its respective exhibits, admitted and offered-but-not-admitted, to the Clerk's Office. The Clerk's Office will docket a notice of receipt. If a notice of receipt is not docketed, within 21

days after the docketing of the court's witness and exhibit list, the opposing party may deliver the other party's exhibits ~~admitted into evidence during trial will be retained in the custody of the party offering them. Such exhibits will include, but not be limited to, the following types of~~ to the Clerk's Office.

(B) Exhibits that are designated sealed on the court's witness and exhibit list must be delivered on a separate and marked digital storage device.

(C) A photograph of a bulky or sensitive ~~exhibits or evidence:~~ exhibit may be included on the storage device. Examples of bulky or sensitive exhibits include:

(i) controlled substances, poisonous or dangerous chemicals, or intoxicating liquors;

(ii) firearms, ammunition, or explosive devices~~,~~;

(iii) pornographic materials~~,~~;

(iv) jewelry~~, poisonous or dangerous chemicals, intoxicating liquors,~~ ;

(v) money or articles of high monetary value~~,~~ or counterfeit money~~,~~;

(vi) demonstrative exhibits; and

~~(i)~~(vii) documents or physical exhibits of unusual bulk or weight.

~~With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.~~

~~(c) After Trial.~~

(c) Disposal of Exhibits in the Custody of the Clerk~~. Where~~ of Court.

(1) The Clerk's Office will notify the offering party when exhibits retained by the Clerk of Court ~~does take custody of~~ may be collected.

(2) The offering party must collect the exhibits ~~under~~within 14 days of the notice. The same process in section ~~83-5(b~~(a)(1~~) of this rule, such~~)(B) must be followed.

~~(1)~~ Uncollected exhibits ~~may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken, which receipt will be filed in the case.~~

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

~~(3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in section 83-5(b)(2) of this rule will retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted, until any appeal is resolved or the time for appeal has expired.~~

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

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

~~(2)~~(3) will be disposed of consistent with court policy.

DUCrimR 5-2 ~~PRETRIAL SERVICES REPORT~~ UNITED STATES PROBATION OFFICE REPORTS AND DOCUMENTS

(a) ~~Requesting a~~ Report.

When the United States requests the detention of a defendant, the magistrate judge will request a report (e.g., a pretrial services report ~~on the defendant~~or supervised release report) under 18 U.S.C. §~~-~~ 3154 from the probation office. The report must address rebuttable presumptions of detention under 18 U.S.C. § 3142(e)(2) and potential penalties for the alleged violation.

~~**(b) Contents of Pretrial Services Report.**~~

~~The court directs that a Pretrial Services Report must address rebuttable presumptions and potential penalties.~~

~~**(c)**~~**(b) Filing ~~and Distribution of Pretrial Services Reports.~~.**

Before the defendant's first court appearance, the ~~United States Probation Office (USPO)~~probation officer must, when possible, file ~~under seal a written pretrial services~~ the report in the court's CM/ECF system~~. USPO must also email~~ consistent with the ~~report simultaneously~~level of access specified in DUCrimR 49-2.

(c) Documents.

(1) When the court receives documents relevant to the ~~prosecutor~~issue of detention before a hearing and ~~defense counsel who~~does not consider the documents, the courtroom deputy will ~~appear~~forward a copy to the party or party's attorney that sent them and not file a copy in the case. If the court considers the documents in advance of the hearing or at the hearing ~~in which~~, the courtroom deputy will provide copies to the parties and file copies in CM/ECF within 3 days after the hearing as a supplement to the report.

(2) If a person brings documents relevant to the issue of detention to a hearing and the court considers the documents, the courtroom deputy will file copies in CM/ECF within 3 days after the hearing as a supplement to the report ~~will~~ .

~~(1)~~(3) These documents must be ~~considered. Before~~filed in CM/ECF using the ~~hearing, defense counsel may discuss and review~~same level of access specified for the report ~~with the defendant~~in DUCrimR 49-2.

(d) Confidentiality, Use, and Disposal of ~~Pretrial Services~~ Reports and Documents.

(1) ~~Pretrial services~~The reports are confidential, subject to the limitations and exceptions of 18 U.S.C. § 3153(c). ~~Within 7 days after the initial detention hearing, the prosecutor and defense~~

(2) A copy of the report must be made available to court, defense counsel, and the government as soon as possible but no later than at the time of the hearing.

(3) Defense counsel may discuss and review the report with the defendant.

~~(1)~~(4) Defense counsel and the government must ~~destroy their copies of the report, except that they may retain the criminal history portion of the report and permit staff and the defendant to review that portion for purposes of guideline calculations. They must not, however,~~not disclose the report to ~~any~~ other ~~person without~~parties or nonparties absent a court order~~.~~, rule, or policy.

(5) An unrepresented defendant must return the copy of the report they received to the probation officer within 7 days after the hearing where the report or document was considered. An unrepresented party must not disclose or disseminate copies of the report.

(6) When information in a report or document is disclosed under DUCrimR 49-2 or court order, the recipient must keep the information confidential and use the information only for administering justice.

(e) Requests for Additional Disclosure.

(1) The court may authorize the additional disclosure of a report, separate from that which is authorized by this rule and DUCivR 49-2, after receiving a written motion and upon a showing a good cause and after considering:

(A) any promise of confidentiality to the source of the information;

(B) any harm that such disclosure might cause to any person;

(C) the objective of confidentiality, as stated in the confidentiality regulations; and

(D) the purpose of the disclosure.

~~(1)~~(2) The motion requesting disclosure of a report should be made to the district or magistrate judge assigned to the case.

DUCrimR 32-1 PRESENTENCE INVESTIGATION REPORTS~~: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES~~ AND DOCUMENTS

(a) Objection to the Presentence Report.

(1) Within 14-days after disclosure to the parties of the initial presentence report, a party must communicate any objections to the probation officer and opposing party.

(2) The objection:

(A) must clearly identify the issues;

(B) must be in writing; and

(C) the written objection must not be filed with the court.

(3) Within 7 days after notice of an objection, the parties and probation must make reasonable efforts to resolve the objections.

(b) Filing the Presentence Report and Sentencing-Related Documents

(1) No fewer than 7 days before sentencing, probation must file with court the presentence report, including an addendum that contains any unresolved objections and probation's comments on those objections.

(2) Within 7 days before sentencing, a party may file a sentencing memorandum or Position of Party with Respect to Sentencing Factors.

(3) Unless otherwise ordered, documents pertaining to the defendant must be provided to probation no later than 10 days before the sentencing hearing.

(4) When the court receives documents relevant to the issue of sentencing before a hearing and does not consider the documents, the courtroom deputy will forward a copy to the party or party's attorney that sent them and not file a copy in the case. If the court considers the documents in advance of the hearing or at the hearing, the courtroom deputy will

provide copies to the parties and file copies in CM/ECF within 3 days after the hearing as a supplement to the report.

(5) If a person brings documents relevant to the issue of sentencing to the sentencing hearing and the court considers the documents, the courtroom deputy will file copies in CM/ECF within 3 days after the hearing as a supplement to the report.

(6) These documents must be filed in CM/ECF using the same level of access for the report as specified under DUCrimR 49-2.

~~(a)~~(c) **Restrictions on Disclosure of Sentencing Recommendations.**

~~Copies~~A copy of the presentence report ~~furnished under Fed. R. Crim. P. 32(b)(6)~~ will exclude the probation officer's confidential recommendation.

~~**(b) Position Statements.**~~

~~After disclosure of the presentence report to the parties, but no later than 7 days before sentencing, counsel for the parties must file, in accordance with the United States Sentencing Commission Guidelines Manual, §§ 6A1.2 and 6A1.3, a pleading entitled "Position of Party with Respect to Sentencing Factors." The pleading must be accompanied by a written statement that the party has conferred in good faith with opposing counsel and with the probation officer in an attempt to resolve any disputed matters.~~

~~**(c) Disclosure of Presentence Report.**~~

(d) Confidentiality and Dissemination.

Except as otherwise provided by Fed. R. Crim. P. 32(b)(6), presentence reports and confidential records maintained by the United States Probation Office will not be released except by order of the court.

(1) Disclosure to Correctional and Treatment Agencies. Probation reports, including the presentence report, may be forwarded routinely to the United States Sentencing Commission, the Federal Bureau of Prisons,

federal contract facilities, the United States Parole Commission, courts of appeals and respective parties, as well as other United States Probation Offices, in accordance with federal probation system policies and procedures. The probation office may prepare a summary of background material in ~~cases~~a case for other correctional or treatment agencies and may review the appropriate file with professional staff members from those agencies upon receipt of a Consent to Release Information form signed by the defendant.

(2) Disclosure in 28 U.S.C. § 2255 Matters. Such reports may be reviewed by the court and authorized court personnel in consideration of matters under 28 U.S.C. § 2255.

DUCrimR 41-1 SEALING OF FED. R. CRIM. P. 41 CASES AND DOCUMENTS

(a) Motions to Seal.

(1) Fed. R. Crim. P. 41 documents must be presented to a magistrate judge. These documents and the associated magistrate judge case will be public at the time of filing unless an order to seal has been entered. Any motion to seal must specify ~~the~~:

(A) the documents to be sealed, including the return;

(B) the grounds in support of the seal; and

(C) the term of seal, which will be no more than 1 year unless the court orders otherwise.

(2) A motion to seal is not required if the only information to be redacted is that which is specified in Fed. R. Crim. P. 49.1(a). The person making the redacted filing may file an unredacted copy simultaneously with the filing of the Fed. R. Crim. P. 41 documents. The redacted copy will be added to the docket and the case and redacted documents will become available to the public. The unredacted copy of the Fed. R. Crim. P. 41 document will have an access level as specified under DUCrimR 49-2.

(b) Motion to Extend the Seal.

A motion to extend the seal and proposed order must be presented to a magistrate judge at least 10 days before the expiration of the seal.

(c) Redacted Copy.

At least 10 days before the seal expires, the government must provide to the Clerk's Office a redacted copy of the Fed. R. Crim. P. 41 document as required by Fed. R. Crim. P. 49.1. The redacted copy will be added to the docket and the case and redacted documents will become available to the public at the time the seal

expires. ~~-~~The unredacted copy of the Fed. R. Crim. P. 41 document will ~~remain~~have an access level as specified under ~~seal.~~ DUCrimR 49-2.

DUCrimR 44-1 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Applicability.

This rule applies to any person:

(1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. § 5034), or a violation of probation;

(2) who is under arrest, when such representation is required by law;

(3) who is seeking collateral relief, as provided in the Criminal Justice Act (CJA);

(4) who is in custody as a material witness as defined in the CJA and 18 U.S.C. §§ 3144 and 3142(f));

(5) who is entitled to appointment of counsel in parole proceedings under 18 U.S.C. Chapter 311;

(6) whose mental condition is the subject of a hearing under 18 U.S.C. Chapter 313; or

(7) for whom the sixth amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which such person faces loss of liberty, any federal law requires the appointment of counsel.

(b) Services Essential to a Proper Defense.

The assigned district judge or magistrate judge may authorize an appointed attorney to incur reasonable expenses for the necessary services of an investigator, for a psychiatric examination of the defendant, or for other services essential to a proper defense. The cost of such additional services must not exceed the authorized statutory maximum. A request to incur such additional expense may be made ex parte to the assigned district judge or magistrate judge

by motion or petition, together with an appropriate CJA form. In addition, an order must be issued and signed by the district or magistrate judge before any additional expenses are incurred. The assigned judge also may order that a subpoena be issued on behalf of an indigent defendant under DUCrimR 17-1.

(c) Post-Trial Duties of Appointed Attorneys.

The duties of an appointed attorney after the trial include the following:

(1) the attorney must inform the defendant of the right to appeal;

(2) if, after consultation with the attorney, the defendant desires to appeal, the attorney must file a notice of appeal, designate the appropriate portions of the record, make all arrangements necessary to order a transcript of needed testimony, and complete all other requirements necessary to perfect the appeal, including making and filing a docketing statement; and,

(3) if the attorney who represented the defendant at trial wishes to continue to represent the defendant in an appeal, the attorney must notify the clerk of the United States Court of Appeals for the Tenth Circuit and take proper steps to obtain appointment from the court of appeals as counsel for the defendant on appeal.

(d) Payment of Services.

An attorney appointed to represent an indigent defendant under the CJA, 18 U.S.C. § 3006A, is responsible for submitting, promptly after the attorney's duties have been terminated, properly completed vouchers and required support documentation on appropriate CJA forms for services rendered by the attorney or others. In cases involving extended services, the court, upon application, may recommend payment in excess of the statutory maximum. All vouchers seeking payments in excess of the statutory maximum must be accompanied by certified time sheets or other evidence setting forth in detail the time spent on the case.

~~Appointments of attorneys for indigent defendants must be in accordance with the CJA Plan for the District of Utah.~~

DUCrimR 57-3 TRANSFER OR ASSOCIATION ~~AND FILING~~ OF CRIMINAL CASES

(a) ~~Pending~~Transfer of Cases Involving the Same Defendant.

(1) ~~Where there are~~ Motion to Transfer. When a defendant has criminal charges pending in 2 or more separate cases ~~pending~~, a party may file a motion to transfer:

(A) the higher-numbered case to the judge assigned to the lowest-numbered case, if none of the cases involve an allegation of violating conditions of supervised release or probation; or

(B) the lower-numbered case to the judge assigned to the higher-numbered case, if violations of supervised release or conditions of probation allegations are pending against ~~the same~~a defendant ~~before 2~~.

(2) Filing the Motion. The motion to transfer must be filed in the case with the judge who will receive transferred case, and a notice of the motion must be filed in all other case in which transfer is sought.

(3) Ruling on the Motion. The judge who will receive the transferred case or ~~more~~cases must rule on the motion to transfer after conferring with the assigned judges~~,~~ in the ~~United States,~~other cases about the ~~defendant, or~~appropriateness of the transfer.

~~(1)~~(4) Sua Sponte Transfer of Cases. The court ~~on its own motion, where appropriate, may move by written motion before either judge to assign the case to the judge with the low-number case.~~may sua sponte transfer cases.

~~**(b) Filing of Information Related to New Charges Based on Plea Bargains.**~~

~~When the United States, as part of a plea bargain, files an information against a defendant setting forth a charge unrelated in substance to a pending charge in a~~

~~case before an assigned judge, the new information must be filed promptly with the Clerk of Court who will open a new criminal case and assign a judge pursuant to section 57-3(a). Thereafter, the United States may make a motion for association or reassignment as set forth in section 57-3(c).~~

~~**(c) Filing Requirements.**~~

(b) Joining Separate Criminal Cases.

(1) Motion and Notice. A motion ~~for association~~to associate separate cases for trial under Fed. R. Crim. P. 13~~, accompanied by a proposed order,~~ may be filed in any ~~one of the cases for which association is being proposed.~~appropriate case. A notice of ~~filing the motion must be filed in each other case that the party seeks to have associated. Both~~ the motion ~~for association~~must be filed in every other proposed associated case. The motion and ~~the~~ notice ~~of filing~~ must include the name and number of all ~~cases for which association is being moved.~~proposed associated cases.

(2) Order. The party filing the motion must email a proposed order in an editable format to the assigned judge of the case with the pending motion.

LOCAL PATENT RULES

~~PREAMBLE~~

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

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

~~The initial disclosures required by the Rules are not intended to confine a party to the contentions it makes at the outset of the case. It is not unusual for a party in a~~

~~patent case to learn additional grounds for claims of infringement, non-infringement, and invalidity as the case progresses. After a reasonable period for fact discovery, however, each party must provide a final statement of its contentions on relevant issues, which the party may thereafter amend only "upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than 14 days of the discovery of the basis for the amendment." LPR 3.4.~~

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

1. SCOPE OF RULES

LPR- 1.1 APPLICATION ~~AND CONSTRUCTION~~

(a) Applicable Cases.

These Local Patent Rules ~~("LPR")~~(LPRs) apply to all cases filed in or transferred to this ~~District after their effective date~~district in which a party makes a claim of infringement, non-infringement, ineligibility, invalidity, or unenforceability of a utility patent. ~~The court may apply all or part of~~

(b) Conflicts with DUCivR.

These LPRs supplement the ~~LPR to any case already pending on the effective date of the LPR. The court may sua sponte or upon motion~~ District of Utah Local Rules of Civil Practice (DUCivRs). If there is a conflict between the DUCivRs and these LPRs, then these LPRs govern.

(c) Modification.

On a party's motion or on its own, the court may modify the obligations and deadlines ~~of the LPR based on the circumstances of any particular case~~in these LPRs when ~~it~~doing so will advance the just, speedy, and inexpensive determination of the ~~action. If a party files a motion that raises claim construction issues prior to the claim construction proceedings provided for in Section 4 of these Patent Rules, the court may defer ruling on the motion until after entry of the claim construction ruling.~~ case.

(d) ~~LPR 1.2 INITIAL~~ Appendix.

An illustrative chronology of LPR deadlines and events is contained in the Appendix to these LPRs. The Appendix does not constitute a rule or modify any of these LPRs.

LPR 1.2 ATTORNEY PLANNING ~~CONFERENCE~~MEETING AND SCHEDULING ~~ORDERS~~ORDER

(a) ~~The parties must hold their conference pursuant to Fed.~~ Attorney Planning Meeting Timing and Content.

No~~R. Civ. P. 26(f) no~~ later than 35~~-~~ days after the filing of the first answer~~. The~~, the parties must hold an Attorney Planning Meeting and discuss ~~and address~~ those matters found in the form patent scheduling order ~~located~~ on the court's ~~website~~website. ~~A completed~~

(b) Scheduling Order.

(1) Unless the court orders otherwise, the parties must present to the court a proposed ~~version of the~~ scheduling order ~~is to be presented to the court~~ no later than 7~~-~~ days after the ~~Rule 26(f) conference unless the court otherwise directs.~~ Attorney Planning Meeting.

(2) No later than 14~~-~~ days after entry of the claim construction ruling, the parties must ~~file~~present to the court a ~~motion for~~ proposed scheduling order ~~governing~~to govern the remaining pretrial obligations. ~~A party may request~~

~~(1)~~(3) On a party's motion or on its own, the court may enter a separate scheduling order for all non-patent causes of action.

LPR~~-~~ 1.3 FACT DISCOVERY

(a) Timing.

The parties ~~must~~may commence fact discovery ~~upon~~on the date for the ~~Initial~~ Attorney Planning ~~Conference under LPR 1.2 and~~Meeting. The parties must complete ~~it~~fact discovery 28~~-~~ days after the ~~date for~~deadline to exchange ~~of~~ claim terms and phrases under LPR~~-~~ 4.~~1.~~ 2.

(b) ~~No later than 14 days after entry of the claim construction ruling a~~**Reopening.** A party may move to reopen fact discovery~~. In support~~ no later than 14 days after entry of the claim construction ruling. The motion~~, the moving party~~ must explain why ~~the claim construction ruling or disclosure of intent to rely on opinions of counsel necessitates~~ further discovery is needed and identify ~~the~~its scope ~~of such discovery.~~ .

~~(a)~~(c) ~~Discovery Concerning Opinions~~**Advice of Counsel**~~:~~.

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

(A) ~~All~~all written opinions of counsel and a summary of oral opinions (including the date, ~~the~~ attorney, and recipient) ~~upon~~on which the party ~~will~~intends to rely;

(B) ~~All~~all information provided to ~~the attorney~~counsel in connection with the advice;

(C) ~~All~~all written attorney work product developed in preparing the ~~opinion that the attorney disclosed to the client~~advice; and

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

(2) The substance of a claim of reliance on advice of counsel offered in defense to a charge of willful infringement, and other information within the scope of a waiver of the attorney~~-~~–client privilege based ~~upon~~on disclosure of ~~such~~the advice, is not subject to discovery until 7~~-~~ days after entry of the claim construction ruling.

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

(4) ~~This Rule does not address~~Nothing in this rule affects whether any information or materials other than those listed in LPR- 1.3(c) are subject to discovery or within the scope of any waiver of the attorney-~~-~~client privilege.

LPR- 1.4 ~~CONFIDENTIALITY~~STANDARD PROTECTIVE ORDER

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

LPR- 1.5 CERTIFICATION OF DISCLOSURES

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

~~LPR~~ 11, 26(g), and 37.

LPR 1.6 ADMISSIBILITY OF ~~DISCLOSURES~~CONTENTIONS

The contentions provided for in LPR- 2.3 and 2.4 are ~~inadmissible~~not admissible as evidence on the merits absent a showing that ~~the~~ disclosures were made in bad faith.

~~*Comment*~~

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

~~LPR 1.7 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE~~

~~Except as provided in this paragraph or otherwise ordered, a party may~~ LPR 1.7

TIMING-BASED DISCOVERY OBJECTIONS

A party may not object to a discovery request or decline to ~~provide~~disclose information ~~otherwise~~ required ~~to be disclosed pursuant to~~under Fed. R. Civ. P. 26(a)(1) ~~because~~on the ~~discovery~~grounds that the request or disclosure ~~requirement~~ is premature ~~in light of or conflicts with these Patent Rules. A party may object to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.~~ , except where a discovery request seeks ~~R. Civ. P. 26(a)(1)) on the ground that they are premature under the timetable provided in these Patent Rules. Once parties have made disclosures as required by these Patent Rules, the parties may conduct further discovery on these subjects~~:

(1) ~~requests for~~ a party's claim construction position ~~(LPR~~ before the disclosures in LPR 4.~~1);~~2;

(2) ~~requests to the~~ a patent ~~claimant for a~~claimant's comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality ~~(~~before the disclosures in LPR- 2.3~~);~~;

(3) ~~requests to~~ an accused ~~infringer for a~~infringer's comparison of the asserted claims and the prior art ~~(~~before the disclosures in LPR- 2.4~~ –~~–2.5~~);~~;

(4) ~~requests to~~ an accused ~~infringer for its~~infringer's non-infringement contentions ~~(~~before the disclosures in LPR- 2.4~~); and~~; or

~~(b)~~ ~~discovery~~information concerning opinions of counsel ~~(LPR 1.3(c)).~~

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

~~2. PATENT INITIAL DISCLOSURES~~

~~*Comment*~~

~~(1)~~(5) ~~*LPR 2.3 – 2.5 supplement*~~before the ~~*initial*~~ disclosures ~~*required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to LPR 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties' disclosures must be meaningful – as opposed to boilerplate and non-evasive. These provisions should be construed accordingly.*~~in LPR 1.3(c).

~~LPR~~ **LPR 1.8 MOTION TO STAY PENDING REEXAMINATION OR OTHER POST-GRANT PROCEEDINGS**

In cases involving a patent that is the subject of pending reexamination or other post-grant proceedings in the U.S. Patent and Trademark Office (USPTO), the parties must confer before a motion to stay is filed with the court. When deciding a motion, the court may consider whether a stay would:

(1) unduly prejudice or present a clear tactical disadvantage to the nonmoving party;

(2) simplify the pending issues in the case;

(3) delay proceedings after discovery is complete or a trial date has been set; and

(4) reduce the burden of litigation.

2. PATENT INITIAL DISCLOSURES AND CONTENTIONS

LPR 2.1 ACCUSED INSTRUMENTALITY DISCLOSURES

No later than 7- days after the defendant files its answer, a party claiming infringement must disclose a list identifying each ~~accused~~known 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.~~infringes one or more asserted patent claims (Accused Instrumentality).

LPR~~-~~ 2.2 INITIAL DISCLOSURES

(a) ~~The plaintiff must provide its initial disclosures under Fed.~~ **Plaintiff's** ~~R. Civ. P. 26(a)(1) ("~~**Initial Disclosures**~~") no later than 21 days after the defendant files its answer; provided, however, if the defendant asserts~~**.**

If a counterclaim for infringement of another patent is filed, the plaintiff must provide its initial disclosures under Fed. R. Civ. P. 26(a)(1) (Initial Disclosures) no later than 21 days after filing its answer to the counterclaim. Otherwise, the plaintiff's Initial Disclosures are due no later than 21~~-~~ days after the ~~plaintiff~~defendant files its answer ~~to that counterclaim. The defendant must provide its~~.

(b) **Defendant's** **Initial Disclosures** ~~no later than 28 days after the defendant files its answer; provided, however, if the defendant asserts~~**.**

If a counterclaim for infringement of another patent is filed, the defendant's Initial Disclosures are due no later than 28~~-~~ days after the plaintiff files its answer ~~or other~~ to ~~that~~the counterclaim. ~~As used in this Rule, the term "document" has the same meaning as in Fed.~~ Otherwise, the defendant's Initial Disclosures are due no later than 28 days after the defendant files an answer. ~~R. Civ. P. 34(a):~~

(c) **Documents Available for Inspection and Copying.**

(1) Party Asserting a Claim for Infringement. A party asserting a claim ~~of patent~~for infringement must, 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:

(A) 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~~before the date of application~~. Production~~ (production of a document ~~pursuant to~~under this ~~Rule~~rule is not an admission that the document evidences or is prior art under 35 U.S.C. § 102~~;~~);

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

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

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

(E) all licenses of the patent rights asserted; and

(F) the date, if known, from which ~~it~~the party alleges any damages~~, if claimed,~~ began ~~to accrue;~~ or, if ~~that date is not known,~~ unknown, an explanation of how the date should be determined.

(2) Party Opposing a Claim for Infringement. A party opposing a claim of ~~patent~~ infringement must 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:

(A) documents or things sufficient to show the operation and construction of all aspects or elements of each Accused Instrumentality that is identified with specificity in the pleading or

Accused Instrumentality Disclosures of the party asserting patent infringement;

(B) a copy of each item of prior art of which the party is aware and ~~upon~~on which the party intends to rely that allegedly ~~anticipates each~~invalidates any 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;

(C) the Accused Instrumentality; and

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

(3) Availability. A party may serve control-numbered copies of the documents and things identified in LPR- 2.2(c) or make them available for inspection and copying.

LPR 2.3 INITIAL INFRINGEMENT CONTENTIONS

(a) ~~A party~~ Timing.

No later than 35 days after the defendant's Initial Disclosures, a party claiming patent infringement must serve on all parties ~~"~~Initial Infringement Contentions~~"~~ containing ~~the following information no later than 35 days after the defendant's Initial Disclosure under LPR 2.2~~:

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

(2) ~~separately~~ for each asserted claim, an identification of each Accused Instrumentality of which the party claiming infringement is aware~~. Each Accused Instrumentality must be identified~~, described 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~~infringes one or more asserted patent claims;

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

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

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

(6) for each alleged direct infringement based on joint acts of multiple parties, a description of the role of each such parties in the direct infringement;

~~(6)~~(7) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

~~(7)~~(8) the basis for any allegation of willful infringement; and

~~(8)~~(9) ~~if a party claiming patent infringement wishes~~ to preserve the right to rely~~, for any purpose,~~ on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality embodies or practices the claimed invention, ~~the party must identify~~an identification, separately for each asserted patent, of each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether there has been marking pursuant to statute.

(b) ~~Without leave of court, a~~**Number of Claims and Substitution of Claims.**

(1) A party ~~claiming patent~~ may claim no more than 10 infringement ~~must limit the allegedly infringed~~ claims ~~to 10~~ per asserted patent~~. If during discovery~~ without leave of court.

(2) If a party claiming patent infringement ~~discovers~~learns of an Accused Instrumentality that was not previously disclosed or known, the party ~~claiming patent~~ may supplement its infringement ~~may, as required by the Federal Rules of Civil Procedure, supplement the infringed claims~~ claims within 14 days of that discovery.

~~(9)~~(3) If supplementation increases the number of infringement claims to more than 10 per ~~an~~ asserted patent ~~by withdrawing~~, then the party must withdraw an equal number of asserted claims ~~and providing the information for the newly asserted claim required by this paragraph 2.3 within 14 days of discovery, except for good cause shown~~.

LPR 2.4 INITIAL NON-INFRINGEMENT, INELIGIBILITY, INVALIDITY, AND UNENFORCEABILITY~~, AND INVALIDITY~~ CONTENTIONS

(a) ~~Each~~ **Timing.**

No later than 14 days after service of the Initial Infringement Contentions, each party opposing a claim of patent infringement or asserting ineligibility, invalidity,

or unenforceability of a patent claim must serve ~~upon~~on all parties its ~~"~~Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability~~, and Invalidity Contentions" no later than 14 days after service of the Initial Infringement Contentions~~ Contentions. ~~Such Initial Contentions must be as follows:~~

(b) Non-Infringement Contentions.

Non-Infringement Contentions must contain a chart~~,~~ that is responsive to the chart required ~~by~~under LPR- 2.3(a)(3~~(c),~~) and that ~~identifies~~describes, for each identified element in each asserted claim, ~~to the extent then known by the party opposing infringement,~~ whether ~~such~~the element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if it is not present, the reason for ~~such~~the denial and the relevant distinctions.

(c) Ineligibility Contentions.

Ineligibility Contentions must describe why the patent fails to fall within the subject matter of 35 U.S.C. § 101 or is otherwise patent ineligible, including the identity of prior art that allegedly shows how a claim element is well-understood, routine, or conventional.

~~**(a)**~~**(d) Invalidity Contentions** ~~must contain the following information to the extent then known to the party asserting invalidity:~~.

(1) ~~identification, with particularity, of~~ Invalidity Contentions must:

(A) identify—

(i) each item of prior art that allegedly ~~anticipates each asserted claim or renders it obvious. Each prior art patent publication must be identified by its number, country of origin, and date of issue. Every other~~ invalidates, alone or in combination, each asserted claim;

(ii) for prior art ~~publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior~~

~~art~~ under 35~~-~~ U.S.C. § 102(a)(1) (effective Mar. 16, 2013) or 35 U.S.C. §§~~-~~ 102(a)–(b) & (g) (2012~~) must be identified by specifying~~), the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the ~~identity of the~~ person or entity ~~which~~that made the use or ~~which~~that made and received the offer, or the person or entity ~~which~~that made the information known or to whom it was made known~~. A~~;

~~(i)~~(iii) for a challenge to inventorship under 35~~-~~ U.S.C. §~~-~~ 101~~ must identify~~, the name of the ~~person(s)~~persons from whom and the circumstances under which the invention or any part of it was derived;

(B) contain a statement~~-~~—

(i) of whether each item of prior art allegedly anticipates each asserted claim or renders it obvious~~. If~~;

(ii) explaining the combination and the reasons to combine the items, if a combination of items of prior art allegedly makes a claim obvious~~, each such combination, and the reasons to combine such items must be identified~~;

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

(C) include a chart~~-~~—

(i) identifying ~~specifically~~ where, in each alleged item of prior art, each element of each asserted claim is found~~, including~~ ; and

~~(iii)~~(ii) for each element ~~that such~~a party contends is governed by 35 U.S.C. § 112(f), ~~a description of~~describing the claimed function of that element and the identity of the ~~structure(s), act(s), or material(s)~~structures, acts, or materials in each item of prior art that performs the claimed function~~; and~~.

~~(2) a detailed statement of any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(b) or lack of enablement or lack of written description under 35 U.S.C. § 112(a).~~

(2) A party asserting invalidity must limit prior art references to 12 per asserted patent without leave of court.

(e) Unenforceability Contentions.

Unenforceability contentions must identify the acts allegedly supporting and all bases for the assertion of unenforceability. ~~Without leave of court, a party asserting invalidity must limit prior art references to 12 per asserted patent.~~

LPR- 2.5 DOCUMENT PRODUCTION ACCOMPANYING INITIAL NON-INFRINGEMENT, INELIGIBILITY, INVALIDITY, AND UNENFORCEABILITY CONTENTIONS

~~With the Initial Non-Infringement, Unenforceability, and Invalidity~~ When serving its Initial Contentions ~~under LPR 2.4~~, the party opposing a claim of patent infringement or asserting invalidity ~~or unenforceability~~ must supplement its Initial Disclosures ~~and, in particular, must produce or make~~by producing or making available for inspection and copying:

(1) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR- 2.3(~~c~~a)(3) chart; and

(2) ~~a copy of~~ any additional items of prior art identified ~~pursuant to~~in LPR-2.4~~(b)(1),~~ including, for foreign prior art, any translation in the party's possession, custody, or control that does not appear in the file history of the asserted patent~~(s).~~.

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

In a ~~case initiated by a complaint for~~ patent declaratory judgment action in which ~~a~~no party ~~files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 2.1 and 2.3 do not apply unless a party makes~~asserts a claim ~~for patent infringement. If no claim~~ of infringement ~~is made~~, the party seeking ~~a~~the declaratory judgment-:

(1) need not comply with LPR 2.1. and 2.3; and

~~(1)~~(2) must, for each declaration for relief being sought, comply with LPR-2.4 and-2.5 no later than 49-days after the defendant's Initial Disclosures are served.

3. FINAL CONTENTIONS

~~**LPR 3.1 FINAL INFRINGEMENT, UNENFORCEABILITY, AND INVALIDITY CONTENTIONS**~~

~~**A party claiming**~~ **LPR 3.1 TIMING**

(a) Final Infringement Contentions.

No later than 21 weeks after the deadline to serve Initial Infringement Contentions, a party asserting patent infringement must serve on all parties ~~"~~Final Infringement Contentions~~"~~ containing the information required ~~by~~in LPR-2.3-(a~~) – (h) no later than 21 weeks~~)(1)–(8).

(b) Final Ineligibility, Invalidity, and Unenforceability Contentions.

Within 14 days after ~~the due date for service of Initial~~Final Infringement Contentions~~. Each~~ are due, each party asserting ineligibility, invalidity, or

unenforceability of a patent claim must serve on all other parties~~, within 14~~ Final Ineligibility, Invalidity, and Unenforceability Contentions containing the information required in LPR 2.4(c)–(e).

(c) Final Non-Infringement Contentions.

No later than 28 days after ~~the~~ Final Infringement Contentions are due, ~~"~~each party asserting non-infringement of a patent claim must serve on all other parties Final ~~Unenforceability and Invalidity~~Non-Infringement Contentions~~"~~ containing the information required ~~by~~in LPR- 2.4-(b~~) and (c).~~).

LPR 3.2 LIMITATIONS ON FINAL CONTENTIONS

(a) Final Infringement Contentions.

Final Infringement Contentions may rely on no more than 8 of the 10 asserted infringement claims~~, from the set of previously~~ per asserted patent identified ~~asserted claims, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties. Final Unenforceability and~~in LPR 2.3(b).

(b) Final Invalidity Contentions.

Final Invalidity Contentions may rely on no more than 10 of the 12 prior art references~~, from the set of previously identified prior art references,~~ per asserted patent ~~without an order~~identified in LPR 2.4(d)(2).

(c) Modification of ~~the court upon~~Limits.

Upon a showing of good cause and ~~absence of~~no unfair prejudice to opposing parties~~.~~

~~**LPR 3.2 FINAL NON-INFRINGEMENT CONTENTIONS**~~

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

~~LPR 3.~~, the court may modify the limits in LPR 3-.2(a) and (b).

LPR 3.3 DOCUMENT PRODUCTION ACCOMPANYING FINAL INVALIDITY CONTENTIONS

~~With the~~**(a)** When serving its Final ~~Invalidity~~ Contentions, ~~the~~a party asserting invalidity ~~of any patent claim~~ must produce or make available for inspection and copying~~:~~ a copy or sample of all prior art identified ~~pursuant to~~under LPR- 3.1, ~~to~~unless the ~~extent not~~prior art was previously produced~~, that does not appear~~ or appears in the file history of the patent~~(s)~~ at issue. ~~If any such item is~~

(b) Any prior art not in English~~, an English~~ must include a translation of the portion~~(s)~~ relied ~~upon must be produced. The~~ on, and the translated portion ~~of the non-English prior art~~ must be sufficient to place ~~in context~~ the particular matter ~~upon which the party relies.~~ in context.

(c) The producing party must separately identify by control-number ~~which~~the documents that correspond to each claim.

LPR- 3.4- AMENDMENT OF FINAL CONTENTIONS

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

(a) Timing.

No later than 14 days after the discovery of the basis for the amendment, a party must move to amend its contentions.

(b) Leave of Court.

Upon a showing of good cause and no unfair prejudice to opposing parties, the court may permit a party to amend its Final Contentions. The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend ~~contentions~~Final Contentions.

~~**LPR 3.5 FINAL DATE TO SEEK STAY**~~

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

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR ~~-~~ 4.1 ~~-~~ DELAY OF RULING ON A MOTION RELATING TO CLAIM CONSTRUCTION

If a party files a motion that raises claim construction issues before the claim construction proceedings provided for in LPR 4.4, the court may defer ruling on the motion until after entry of the claim construction ruling.

LPR 4.2 EXCHANGE OF PROPOSED CLAIM TERMS TO BE CONSTRUED ~~ALONG WITH PROPOSED CONSTRUCTIONS~~

(a) Timing.

No later than 14 ~~-~~ days after service of the Final Non-Infringement Contentions ~~pursuant to LPR 3.1 and LPR 3.2~~, each party must serve on all other parties a list ~~of (i) the~~ identifying or providing:

(1) claim terms and phrases for the court ~~should~~to construe; ~~(ii)~~

(2) proposed constructions; ~~(iii) identification of~~

~~(1)~~(3) any claim element that is governed by 35 ~~-~~ U.S.C. § ~~-~~ 112(f~~);~~) and ~~(iv)~~ a description of ~~the~~its function ~~of that element,~~ and the ~~structure(s),~~

~~act(s),~~structures, acts, or ~~material(s)~~materials corresponding to that element, identified by column and line number of the asserted patent~~(s).~~.

(b) Meet and Confer.

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

~~*Comment*~~

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

(c) Limitations and Modification.

Upon a showing of good cause, the court may permit more than 10 terms or phrases to be presented for construction. The assertion of multiple non-related patents may constitute good cause.

LPR- 4.~~2~~ 3 CLAIM CONSTRUCTION BRIEFS

(a) Filing Time, Page Limits, and Chart.

(1) No later than 35- days after the exchange of terms ~~set forth~~and phrases in LPR- 4.~~1~~2, the parties must simultaneously file ~~simultaneous Cross-Motions for Claim Construction, which may not exceed 25 pages absent prior leave of court. The~~ cross-briefs ~~must identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and must separately identify any extrinsic evidence a party contends supports its proposed~~ for claim construction~~. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition~~, which must not exceed 25 pages without leave of court.

~~**(b)** On the date for filing the Cross-Motions for Claim Construction, the parties must file a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. The prosecution history must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing, and all parties must cite to the Joint Appendix when referencing the materials it contains. Any party may file a separate appendix to its claim construction brief containing other supporting materials. It must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing.~~

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

~~deposition. The brief must also describe all objections to any extrinsic evidence identified in the Cross-Motions for Claim Construction.~~

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

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

(2) No later than 28 days after the filing of cross-briefs for claim construction, the parties must simultaneously file response briefs, which must not exceed 25 pages without leave of court.

(3) No later than 7~~-~~ days after the filing of the ~~Responsive Claim Construction~~response briefs, the parties must file~~ (1) ~~:

(A) a joint claim construction chart that ~~sets forth each claim term and phrase addressed in the Cross-Motions for Claim Construction; each party's proposed construction, and (2) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing pursuant to LPR 4.3. The document must also be submitted to the court in Word Perfect or MS Word format. The chart should include a series of~~ identifies in separate columns ~~listing —~~

(i) the complete language of each disputed claim term~~, each party's proposed claim constructions~~ or phrase in ~~separate columns, a column~~the cross-briefs for ~~the court to enter its~~ claim construction~~ and ~~;

(ii) a reference to where the ~~dispute~~ disputed claim term appears in the asserted patent~~. "Agreed" entered in the column~~;

(iii) each party's proposed claim constructions; and

(iv) a placeholder for the ~~court's~~court to enter its claim construction ~~will indicate agreed~~or a statement of whether the parties agree on the claim construction;

(B) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing.

(4) The joint claim construction chart must be emailed in an editable format to the assigned judge's chambers.

(b) Briefs and Excess Pages.

(1) For each term or phrase to be presented to the court, each party must state in its cross-brief for claim ~~constructions~~construction whether a construction in a party's favor may be dispositive of an issue and why.

~~*Comment*~~

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

(2) A cross-brief for claim construction must identify any intrinsic evidence with citation to the joint appendix and separately identify any extrinsic evidence that a party contends supports its proposed claim construction.

(3) A response brief must include all objections to any extrinsic evidence identified in the cross-briefs.

(4) The presence of multiple alleged infringers with different products or processes may constitute good cause for allowing additional pages or separate briefing as to different alleged infringers.

(c) Joint and Separate Appendices.

(1) When cross-briefs for claim construction are filed, the parties must file and cite to a joint appendix containing the patents in dispute and the prosecution history for each patent.

(2) Any party may file a separate appendix to its claim construction brief with other supporting materials.

(3) Any appendix and prosecution history must:

(A) contain an index;

(B) be paginated and text searchable; and

(C) have each document bookmarked in a PDF file.

(d) Reply.

A party must not file a reply or surreply unless the court requests it.

(e) Witness Statement.

A party must make a witness available for a deposition if the witness has provided an affidavit or declaration in support of a claim construction and has not previously been deposed.

LPR- 4.~~3~~ 4 CLAIM CONSTRUCTION HEARING

Concurrent with the filing of the ~~Responsive Claim Construction Briefs, a party must file a Motion to Set Claim Construction Hearing. Either before or after the filing of Cross-Motions for Claim Construction, the~~claim construction response briefs, the parties must file a joint motion for a claim construction hearing. The court will issue an order describing the schedule and procedures for a claim construction hearing. ~~Any~~Unless the court orders otherwise, any exhibits, including demonstrative exhibits, to be used at a claim construction hearing must be exchanged no later than 7- days before the hearing.

LPR- 4.~~4~~ 5 TUTORIAL

(a) Timing.

No later than 14- days after the filing of the ~~Responsive Claim Construction Briefs,~~ claim construction response briefs, a party -may ~~submit to the court~~file a tutorial summarizing and explaining the technology at issue~~ either~~ .

(b) Form.

(1) The tutorial may be in ~~writing~~written or ~~in~~ presentation form ~~such as~~(e.g., PowerPoint) and must not ~~to~~ exceed either 30- pages~~,~~ or ~~on DVD not to exceed~~ 30- minutes. ~~The parties~~

(2) A party may request leave to provide a live tutorial ~~to the court as part of its submission.~~ .

(c) Limitations.

No argument ~~are~~is permitted in ~~the tutorial. The~~ a tutorial. Tutorials are only for purposes of claim construction, and the parties may not rely ~~upon~~on any statement made in ~~the~~a tutorial ~~in~~for any other ~~aspects~~part of the litigation. ~~If the court considers an early claim construction in connection with a dispositive motion for summary judgment, a party may submit or the court may require the tutorial to be submitted at that time.~~

5. EXPERT WITNESSES

LPR- 5.1 TIMING OF DISCLOSURE OF EXPERTS ~~AND EXPERT REPORTS~~

~~Unless the court orders otherwise,~~

~~**(a)** expert witness disclosures and depositions are governed by this Rule;~~

~~no~~**(a)** No later than 28- days after entry of the claim construction ruling, each party must make its initial expert witness disclosures required under Fed. R. Civ. P. ~~by Federal Rule of Civil Procedure~~ 26 on issues for which ~~it~~the party bears the burden of proof~~;~~.

~~no~~**(b)** No later than 28~~-~~ days after the date for initial expert reports, each party must make its ~~rebuttal~~ expert witness disclosures required under Fed. R. Civ. P.~~by Federal Rule of Civil Procedure~~ 26 on ~~the~~ issues for which ~~the opposing~~a party does not bear the burden of proof.

(c) If a party who bears the burden of proof~~.~~ wants to designate rebuttal expert witnesses, it must make its rebuttal expert witness disclosures required under Fed. R. Civ. P. 26 no later than 28 days after the date for reports on issues for which an opposing party does not bear the burden of proof.

~~**(b)** Expert Reports Generally:~~

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

~~(2) Unless leave of court is applied for and given, there will not be any expert testimony at trial on any opinion not fairly disclosed in that expert's report.~~

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

LPR~~-~~ 5.2~~——~~ EXPERT DEPOSITIONS ~~OF EXPERTS~~

~~Depositions of expert witnesses~~ Expert witness depositions must be completed no later than 35~~-~~ days after the deadline to exchange ~~of~~ expert rebuttal reports.

LPR- 5.3- PRESUMPTION AGAINST SUPPLEMENTATION OF REPORTS

(a) ~~Amendments or supplementation to expert reports after the deadlines~~ Except as provided ~~herein are presumptively prejudicial and must not be allowed absent prior leave of court~~ in this rule, a party may not serve or rely on an untimely amendment or supplement to an expert report.

(b) A party may serve and rely on an untimely amendment or supplement to an expert report:

(1) upon a motion showing ~~of~~ good cause ~~that~~why the amendment or ~~supplementation~~supplement could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced~~. This rule does not preclude~~; or ~~excuse supplementation required by the Rules of Civil Procedure when there are changes~~

~~(1)~~(2) if a change in factual support or legal precedent ~~necessitating such supplementation.~~necessitates the amendment or supplement under Fed. R. Civ. P. 26(e).

6. DISPOSITIVE MOTIONS

LPR- 6.1 ~~FINAL DAY FOR FILING~~ DISPOSITIVE MOTIONS

~~All~~A dispositive ~~motions~~motion must be filed no later than 28- days after the ~~scheduled date~~deadline for ~~the end of~~completing expert ~~discovery.~~

~~*Comment*~~

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

~~LPR 6.2 SUMMARY JUDGMENT~~

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

7. FINAL PRETRIAL CONFERENCE

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

(a) Final Pretrial Disclosures.

In its final pretrial disclosures~~,~~:

(1) a party asserting infringement must ~~reduce~~limit the number of asserted claims to a manageable subset of previously identified asserted claims~~. As a general rule, the court considers a manageable number to be 3 claims per patent,~~; and ~~10 claims total if more than one patent is being asserted. Except upon a showing of good cause, including principles of proportionality applying to the need for pretrial discovery,~~

(2) a party opposing infringement must ~~not file a motion to~~ limit the number of ~~asserted claims until the later of resolution of dispositive motions or 90 days prior to trial.~~

~~In its final pretrial disclosures, a party opposing infringement must reduce the number of~~ prior art references ~~— and any combinations thereof —~~ to be asserted in support of ~~anticipation or obviousness~~invalidity theories to a manageable subset of previously identified prior art references. ~~As a general rule, a~~

(b) Manageable Subset of Claims and Prior Art References.

A manageable ~~number of references per claim~~subset is presumptively no more than~~-~~:

(1) 3 claims per patent or a total of 10 claims if more than 1 patent is asserted; and

(2) 3~~ references. A party opposing infringement must also identify how these references will be used, i.e., as anticipatory~~ prior art references, either alone or in combination, ~~against each asserted~~ per claim.~~ Absent extraordinary circumstances,~~

(c) Motion to Limit Number.

Except upon a ~~party asserting infringement~~showing of good cause, the following must not ~~file~~ be filed until the resolution of dispositive motions or 90 days before trial, whichever is later:

(1) a motion to limit the number of asserted claims; and

(2) a motion to limit the number of asserted prior art references~~ until the later of resolution of dispositive motions~~.

Appendix: Chronology of LPR Deadlines and Events

This chronology is illustrative and does not constitute a rule or ~~90 days prior to trial.~~modify any rules.

Rule	Deadline / Event	Time
INITIAL DISCLOSURES		
LPR 2.1	Accused Instrumentality Disclosures	7 days after defendant files its answer
LPR 2.2	Plaintiff's Initial Disclosures	21 days after (a) defendant files its answer or (b) plaintiff files an answer to a counterclaim
LPR 2.2	Defendant's Initial Disclosures	28 days after (a) defendant files its answer or (b) plaintiff files an answer to a counterclaim
SCHEDULING		
LPR 1.2	Attorney Planning Meeting	35 days after the filing of the first answer
LPR 1.3	Fact Discovery Begins	The date for Attorney Planning Meeting
LPR 1.2	Proposed Scheduling Order	7 days after Attorney Planning Meeting
INITIAL CONTENTIONS		
LPR 2.3	Initial Infringement Contentions	35 days after defendant's Initial Disclosures

Rule	Deadline / Event	Time
LPR 2.4	Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability Contentions	14 days after service of Initial Infringement Contentions
LPR 2.6	Initial Ineligibility, Invalidity, and Unenforceability Contentions in Patent Declaratory Judgment Action Where There Are No Claims for Infringement	49 days after defendant's Initial Disclosures
FINAL CONTENTIONS		
LPR 3.1	Final Infringement Contentions	21 weeks (147 days) after the deadline to serve Initial Infringement Contentions
LPR 3.1	Final Ineligibility, Invalidity, and Unenforceability Contentions	14 days after Final Infringement Contentions are due
LPR 3.1	Final Non-Infringement Contentions	28 days after Final Infringement Contentions are due
LPR 3.4	Amendment of Final Contentions	14 days after discovery of the basis for amendment

Rule	Deadline / Event	Time
CLAIM CONSTRUCTION		
LPR 4.2	Exchange Proposed Claim Terms and Phrases with Proposed Constructions	14 days after service of Final Non-Infringement Contentions
LPR 4.2	Meet and Confer on 10 Claim Terms and Phrases	7 days after the exchange of claim terms and phrases
LPR 1.3	Fact Discovery Ends	28 days after the date for exchange of claim terms and phrases in LPR 4.2
LPR 4.3	Cross-Briefs for Claim Construction	35 days after the exchange of claim terms and phrases in LPR 4.2
LPR 4.3	Response Claim Construction Briefs	28 days after the filing of cross-briefs for claim construction
LPR 4.4	Motion for Claim Construction Hearing	28 days after the filing of cross-briefs for claim construction
LPR 4.3	Joint Claim Construction Chart and Joint Status Report	7 days after the filing of the response claim construction briefs
LPR 4.5	Optional Tutorial	14 days after the filing of the response claim construction briefs

Rule	Deadline / Event	Time
LPR 4.3	Deposition of Witness Providing Affidavit/Declaration for Claim Construction	Before claim construction hearing
LPR 4.4	Exchange Claim Construction Hearing Exhibits	7 days before claim construction hearing
LPR 4.4	Claim Construction Hearing	TBD
	Claim Construction Ruling	TBD
EXPERTS		
LPR 5.1	Expert Reports of Parties Bearing the Burden of Proof	28 days after claim construction ruling
LPR 5.1	Expert Reports of Parties Not Bearing the Burden of Proof	28 days after expert reports of parties bearing the burden of proof
LPR 5.1	Rebuttal Expert Witness Reports	28 days after expert reports of parties not bearing the burden of proof
LPR 5.2	Expert Witness Depositions	35 days after the deadline for expert rebuttal reports

Rule	Deadline / Event	Time
DISPOSITIVE MOTIONS		
LPR 6.1	Dispositive Motions	28 days after the deadline for completing expert witness depositions

~~Counsel Submitting and Utah State Bar Number~~

~~Attorneys for~~

~~Address~~

~~Telephone~~

~~E-mail Address~~

Counsel's Name and Utah State Bar Number *(or Party's Name if Self-Represented)*

Address

City, State, Zip

Phone

Email

Check your email. You will receive information and documents at this email address.

I am the [ ] Plaintiff or [ ] Defendant
[ ] Attorney for the [ ] Plaintiff or [ ] Defendant

This is a [ ] Limited Appearance

~~IN~~
THE UNITED STATES DISTRICT COURT

~~FOR THE~~

DISTRICT OF UTAH

~~_____,~~	~~**ATTORNEY PLANNING MEETING REPORT**~~

Plaintiff, v.	Case No. _____
_____, Plaintiff, vs. Defendant.	**Attorney Planning Meeting Report** Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* District Judge _____ Magistrate Judge
Defendant.	

1. Under Fed. R. Civ. P 26(f), **PRELIMINARY MATTERS**:

a. Describe the nature of the claims and affirmative defenses:

b. This case is _____ not referred to a magistrate judge

_____ referred to magistrate judge

_____

_____ under 636(b)(1)(A)

_____ under 636(b)(1)(B)

_____ assigned to a magistrate judge under General Order 07-001 and

____ all parties consent to the assignment for all proceedings or

~~____ one or more parties request reassignment to a district judge~~

~~c. Pursuant to Fed.~~ the Local Rules of Practice, and the Order to Propose Schedule, if applicable, the parties must confer and develop a proposed discovery plan addressing the areas that follow. The parties must email a copy of the proposed scheduling order in an editable format to the assigned magistrate judge's chambers. If a magistrate judge is not associated with the case, please email the copy to the district judge's chambers.

1. PRELIMINARY MATTERS

a.		Claims and Defenses: *(briefly describe the nature and basis of claims and any affirmative defenses)*		
b.		Fed. R. Civ. P. 26(f)(1) Conference: *(date the conference was held)*		*00/00/00*
c.		Participants: *(include the name of the party and attorney, if applicable)*		
d.		Fed. R. Civ. P 26(a)(1) Initial Disclosures: *(the parties have exchanged initial disclosures or will exchange no later than the date provided)*		*00/00/00*
e.		Under Fed. R. Civ. P. 5(b)(2)(E), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by the court's electronic-filing system or email transmission. Electronic service constitutes notice and service as required by those rules. The right to service by USPS mail is waived.	Yes ☐	No ☐

2. PROTECTIVE ORDER

a.		The parties anticipate the case will involve the disclosure of information, documents, or other materials that will be designated as confidential.	Yes ☐	No ☐

b.		If the case will involve the disclosure of information, documents, or other materials that will be designated as confidential, then good cause exists for the court to enter the court's Standard Protective Order (SPO) under DUCivR 26-2: *(briefly describe the need for a protective order)*
c.		If a protective order is needed and the parties **are not** using the court's SPO, then the court's SPO, in effect under DUCivR 26-2, will govern until the court adopts a different protective order. The parties will need to file a motion under DUCivR 7-1(a)(4)(D) requesting the court to enter a proposed (stipulate) protective order. The parties' stipulated protective order should identify a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must be included in the proposed protective order under Fed. R. Evid. 502(d). *(Please explain the process below.)*
d.		If the parties do not anticipate the case will involve the disclosure of information, documents, or the materials that will be designated as confidential, the parties still should identify, in the space below, a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must also be included in the proposed Scheduling Order: *(explain the process)*

~~R. Civ. P. 26(f), a meeting was held on _____ (*specify date*) at (*specify location*).~~

~~The following attended:~~

~~_____ *name of attorney,*~~

~~counsel for _____ *name of party*~~

~~_____ *name of attorney,*~~

~~counsel for _____ *name of party*~~

d. The parties _____ have exchanged or _____ will exchange by ___/___/___ the initial disclosures required by Rule 26(a)(1).

e. Pursuant to Fed. R. Civ. P. 5(b)(2)(D), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by either (i) notice of electronic filing, or (ii) email transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.

2. DISCOVERY PLAN: The parties jointly propose to the court the following discovery plan: *Use separate paragraphs or subparagraphs as necessary* ***if the parties disagree.***

a. Discovery is necessary on the following subjects: *Briefly describe the subject areas in which discovery will be needed.*

b. Discovery Phases

Specify whether discovery will (i) be conducted in phases, or (ii) be limited to or focused on particular issues. If (ii), specify those issues and whether discovery will be accelerated with regard to any of them and the date(s) on which such early discovery will be completed.

c. Designate the discovery methods to be used and the limitations to be imposed.

(1) *For oral exam depositions, (i) specify the maximum number for the plaintiff(s) and the defendant(s), and (ii) indicate the maximum number of hours unless extended by agreement of the parties.*

Oral Exam Depositions

Plaintiff(s) _____

Defendant(s) _____

Maximum number of hours per deposition _____

(2) *For interrogatories, requests for admissions, and requests for production of documents, specify the maximum number that will be served on any party by any other party.*

~~Interrogatories _____~~

~~Admissions _____~~

~~Requests for production of documents _____~~

~~(3) Other discovery methods: *Specify any other methods that will be used and any limitations to which all parties agree.*~~

~~d. Discovery of electronically stored information should be handled as follows: *Brief description of parties' agreement.*~~

~~e. The parties have agreed to an order regarding claims of privilege or protection as trial preparation material asserted after production, as follows: *Brief description of provisions of proposed order.*~~

~~f. Last day to file written discovery __/__/__~~

~~g. Close of fact discovery __/__/__~~

~~h. *(optional)* Final date for supplementation of disclosures under Rule 26(a)(3) and of discovery under Rule 26(e) __/__/__~~

3. ~~3. AMENDMENT~~DISCOVERY PLAN

a.		Discovery Plan: The parties agree to the following discovery plan. • If the parties disagree, clearly indicate the disagreement in the space below:	Yes ☐	No ☐
b.		Discovery Subjects: *(briefly describe the subject areas in which discovery will be needed)*		
c.		Discovery Phases: • Will discovery be conducted in phases? If so, please explain. • Will discovery be limited to or focused on particular issues? If so, please explain and identify whether discovery will be accelerated on any issue and the due dates.		
d.		Electronically Stored Information: The parties will handle discovery of electronically stored information as follows:		

4. FACT DISCOVERY

a.	Fact Discovery Limitations—		
	1.	Maximum number of depositions by Plaintiff:	*10 or #*
	2.	Maximum number of depositions by Defendant:	*10 or #*
	3.	Maximum number of hours for each deposition: (*unless extended by agreement of parties*)	*7 or #*
	4.	Maximum interrogatories by any party to any party:	*25 or #*
	5.	Maximum requests for admissions by any party to any party:	#
	6.	Maximum requests for production by any party to any party:	#
b.	Other Fact Discovery Deadlines—		
	1.	Deadline to serve written discovery:	*00/00/00*
	2.	Deadline for fact discovery to close:	*00/00/00*
	3.	Deadline for supplementation of disclosures and responses under Fed. R. Civ. P. 26(e): (*optional)*	*00/00/00*

~~1.~~5. AMENDING OF PLEADINGS AND ~~ADDITION~~JOINING OF PARTIES~~:~~[1]

~~a. The cutoff dates for filing a motion to amend pleadings are: *specify date*~~

~~Plaintiff(s) ___/___/___ Defendant(s) ___/___/___~~

~~b. The cutoff dates for filing a motion to join additional parties are: *specify date*~~

~~Plaintiff(s)___/___/___ Defendants(s) ___/___/___~~

~~***(NOTE: Establishing cutoff dates for filing motions does not relieve counsel from the requirements of Fed. R. Civ. P. 15(a))***~~.~~

~~4.~~

a.	Deadline to file a motion to amend pleadings—			
	1.	Plaintiffs:		*00/00/00*
	2.	Defendants:		*00/00/00*
b.	Deadline to file a motion to join additional parties—			
	1.	Plaintiffs:		*00/00/00*
	2.	Defendants:		*00/00/00*

~~2.~~6. EXPERT ~~REPORTS~~:DISCOVERY

[1] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

a. The parties will disclose the subject matter and identity of their experts on (*specify dates):*

Party(ies) bearing burden of proof ___/___/___

Counter Disclosures ___/___/___

b. Reports from experts under Rule 26(a)(2) will be submitted on (*specify dates):*

Party(ies) bearing burden of proof ___/___/___

Counter Reports ___/___/___

5.

a.	Filing of Notice of Designation required by DUCivR 26-1(a)(2)—		
	1.	Parties bearing the burden of proof:	*00/00/00*
	2.	Parties not bearing the burden of proof:	*00/00/00*
b.	Service of Fed. R. Civ. P. 26(a)(2) Disclosures and Reports—		
	1.	Parties bearing the burden of proof:	*00/00/00*
	2.	Parties not bearing the burden of proof:	*00/00/00*
	3.	Rebuttal reports, if any:	*00/00/00*
c.	Deadline for expert discovery to close:		*00/00/00*

OTHER DEADLINES:

a. Expert Discovery cutoff: ___/___/___

b. Deadline for filing dispositive[2] or potentially dispositive motions including motions to exclude experts where expert testimony is required to prove the case.

___/___/___

[2] Dispositive motions, if granted, resolve a claim or defense in the case; nondispositive motions, if granted, affect the case but do not resolve a claim or defense.

c. Deadline for filing partial or complete motions to exclude expert testimony ___/___/___

6. ADR/SETTLEMENT:

Use separate paragraphs/subparagraphs as necessary if the parties disagree.

a. The potential for resolution before trial is: ___ good ___ fair ____ poor

b. The parties intend to file a motion to participate in the Court's alternative dispute resolution program for: settlement conference (with magistrate judge): _____ arbitration: _____ mediation: _____

c. The parties intend to engage in private alternative dispute resolution for:

arbitration: _____ mediation: _____

d. The parties will re-evaluate the case for settlement/ADR resolution on (*specify date):* __/___/___

3.7. 7. TRIAL AND PREPARATION FOR TRIAL: -RELATED INFORMATION

a. The parties should have _____ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3) (if different than the 14 days provided by Rule).

b. This case should be ready for trial by: *specify date* __/___/___

Specify type of trial: Jury _____ Bench ____

c. The estimated length of the trial is: *specify days* _____

a.		Deadline for filing dispositive or potentially dispositive motions: *(including a motion to exclude experts when expert testimony is required to prove the case)*		*00/00/00*
b.		Trial: *(select the type of trial)*	Bench ☐	Jury ☐
c.		Trial days:		*# days*

_____ Date: ___/___/___
Signature and typed name of ~~Plaintiff(s)~~Plaintiff's Attorney *(or Party's Name if self-represented)*[3]

_____ Date: ___/___/___
Signature and typed name of ~~Defendant(s)~~Defendant's Attorney *(or Party's Name if self-represented)*

~~NOTICE TO COUNSEL~~

~~Instructions to file the Attorney Planning Meeting Report can be found on the court's Civil Scheduling webpage.~~

[3] Instructions for attaching the Attorney Planning Meeting Report to a Stipulated Motion for Scheduling Order or Motion for a Scheduling Conference can be found on the court's Civil Scheduling webpage.

Counsel's Name and Utah State Bar Number *(or Party's Name if Self-Represented)*

Address

City, State, Zip

Phone

Email

Check your email. You will receive information and documents at this email address.

I am the [ ] Plaintiff or [ ] Defendant
[ ] Attorney for the [ ] Plaintiff or [ ] Defendant

This is a [ ] Limited Appearance

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

_____ Plaintiff, vs. _____ Defendant.	**Attorney Planning Meeting Report – Patent Cases** _____ Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* _____ District Judge _____ Magistrate Judge

Under Fed. R. Civ. P 26(f), the Local Patent Rules (LPRs), and the Order to Propose Schedule, if applicable, the parties must confer and develop a proposed discovery plan addressing the areas that follow below. The parties must email a copy of the proposed scheduling order in an editable format to the assigned magistrate judge's

chambers. If a magistrate judge is not associated with the case, please email the copy to the district judge's chambers.

1. PRELIMINARY MATTERS

a.		Claims and Defenses: *(briefly describe the nature and basis of claims and any affirmative defenses)*		
b.		Fed. R. Civ. P. 26(f)(1) Conference: *(date the conference was held)*		*00/00/00*
c.		Participants: *(include the name of the party and attorney, if applicable)*		
d.		Under Fed. R. Civ. P. 5(b)(2)(E), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by the court's electronic-filing system or email transmission. Electronic service constitutes notice and service as required by those rules. The right to service by USPS mail is waived.	Yes ☐	No ☐

2. PROTECTIVE ORDER

a.		The parties anticipate the case will involve the disclosure of information, documents, or other materials that will be designated as confidential.	Yes ☐	No ☐
b.		If the case will involve the disclosure of information, documents, or other materials that will be designated as confidential, then good cause exists for the court to enter the court's Standard Protective Order (SPO) under DUCivR 26-2: *(briefly describe the need for a protective order)*		
c.		If a protective order is needed and the parties **are not** using the court's SPO, then the court's SPO, in effect under DUCivR 26-2, will govern until the court adopts a different protective order. The parties will need to file a motion under DUCivR 7-1(a)(4)(D) requesting the court to enter a proposed (stipulated) protective order. The parties' stipulated protective order should identify a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must be included in the proposed protective order under Fed. R. Evid. 502(d). *(Please explain the process below.)*		

d.		If the parties do not anticipate the case will involve the disclosure of information, documents, or the materials that will be designated as confidential, the parties still should identify, in the space below, a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must also be included in the proposed Scheduling Order: *(explain the process)*

3. DISCOVERY PLAN

a.		Discovery Plan: The parties agree to the following discovery plan. • If the parties disagree, clearly indicate the disagreement in the space below:	Agree ☐	Disagree ☐
b.		Discovery Subjects: *(briefly describe the subject areas in which discovery will be needed)*		
c.		Discovery Phases: • Will discovery be conducted in phases? If so, please explain. • Will discovery be limited to or focused on particular issues? If so, please explain and identify whether discovery will be accelerated on any issue and the due dates.		
d.		Electronically Stored Information: The parties will handle discovery of electronically stored information as follows:		

4. PRELIMINARY MATTERS AND DISCLOSURES

a.		Deadline for Plaintiff's Accused Instrumentalities Disclosure: [LPR 2.1]	*00/00/00* [7 days after 1st answer—Day 7/Week 1]
b.		Deadline for Plaintiff's Rule 26(a)(1) Initial Disclosure: [LPR 2.2]	*00/00/00* [Day 21/Week 3]
c.		Deadline for Defendant's Rule 26(a)(1) Initial Disclosure: [LPR 2.2]	*00/00/00* [Day 28/Week 4]
d.		Fed. R. Civ. P. 26(f)(1) Conference and Discovery Begins: [LPR 1.2, 1.3]	*00/00/00* [Day 35/Week 5]
e.		Attorney Planning Meeting Report and Proposed Scheduling Order filed: [LPR 1.2]	*00/00/00* [Day 42/Week 6]

f.		Deadline for Plaintiff to serve Initial Infringement Contentions: [LPR 2.3]	*00/00/00* [Day 63/Week 9]
g.		Deadline for Defendant to serve Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability Contentions: [LPR 2.4, 2.6]	*00/00/00* [Day 77/Week 11]
h.		If no infringement claims, deadline for Plaintiff to serve Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability Contentions: [LPR 2.4, 2.6]	*00/00/00* [Day 77/Week 11]
i.		Deadline to file motion to amend pleadings	*00/00/00* [Day 112/Week 16]
j.		Deadline to file motion to join parties	*00/00/00* [Day 112/Week 16]
k.		Deadline for Final Infringement Contentions: [LPR 3.1]	*00/00/00* [Day 210/Week 30]
l.		Deadline for final Ineligibility, Invalidity, and Unenforceability Contentions: [LPR 3.1]	*00/00/00* [Day224/Week 32]
m.		Deadline for Final Non-Infringement: [LPR 3.1]	[Day 238/Week 34]
n.		Deadline to serve written discovery before claim construction:[Fed. R. Civ. P. 34]	*00/00/00* [Day 250]
o.		Deadline for fact discovery to close before claim construction: [LPR 1.3(a)]	*00/00/00* [Day 280/Week 40]

5. FACT DISCOVERY

a.		Maximum number of depositions by Plaintiff:	*10 or #*
b.		Maximum number of depositions by Defendant:	*10 or #*
c.		Maximum number of hours for each deposition: (*unless extended by agreement of parties*)	*7 or #*
d.		Maximum interrogatories by any party to any party:	*25 or #*
e.		Maximum requests for admissions by any party to any party:	#
f.		Maximum requests for production by any party to any party:	#

6. CLAIM CONSTRUCTION DEADLINES

a.		Deadline for parties to exchange proposed claim terms and claim constructions for construction: [LPR 4.2]	*00/00/00* [Day 252/Week 36]

b.		Deadline for parties to reach an agreement to submit no more than 10 terms for construction: [LPR 4.2]	*00/00/00* [Day 259/Week 37]
c.		Deadline for parties to file and serve Cross-Briefs for Claim Construction and Joint Appendix: [LPR 4.3]	*00/00/00* [Day 287/ Week 41]
d.		Deadline for parties to file Simultaneous Responsive Claim Construction Briefs: [LPR 4.3]	*00/00/00* [Day 315/Week 45]
e.		Deadline for parties to file Joint Claim Construction Chart & Joint Status Report Due: [LPR 4.3]	*00/00/00* [Day 322/ Week 46]
f.		Deadline for parties to file a Tutorial: [LPR 4.5]	*00/00/00* [Day 329/ Week 47]
g.		Deadline for parties to exchange exhibits: [LPR 4.4]	TBD [Day 7 Before CCH]
h.		Claim Construction Hearing:[1] [LPR 4.4]	TBD

7. TRIAL-RELATED INFORMATION

a.		Trial: *(select the type of trial)*	Bench ☐	Jury ☐
b.		Trial days:		*# days*

_____ Date: ___/___/___
Signature and typed name of Plaintiff's Attorney (*or Party's Name if self-represented)*[2]

_____ Date: ___/___/___
Signature and typed name of Defendant's Attorney (*or Party's Name if self-represented)*

[1] Parties should file a joint motion to set the date for the Claim Construction Hearing per LPR 4.4.
[2] Instructions for attaching the Attorney Planning Meeting Report to a Stipulated Motion for Scheduling Order or Motion for a Scheduling Conference can be found on the court's Civil Scheduling webpage.

PROPOSED SCHEDULING ORDER INSTRUCTIONS
~~**INSTRUCTIONS ON THE USE OF THIS FORM**~~

- ~~When~~Please remove this page from the ~~Attorney Planning Meeting Report~~copy that is filed with the court~~, please remove this page and~~.

- Please email ~~this form to~~a copy of the ~~presiding judge on the case, or if~~proposed scheduling order in an ~~Order Referring Case has been entered,~~editable format to the assigned magistrate ~~judge.~~judge's chambers. If a magistrate judge is not associated with the case, please email the copy to the district judge's chambers.

- WARNING – Do not use this proposed scheduling order for a patent, ERISA, or administrative review under DUCivR 7-4 cases.

~~IN~~

THE UNITED STATES DISTRICT COURT
~~FOR THE~~

DISTRICT OF UTAH

~~*Plaintiff*~~, ~~Plaintiff,~~ ~~v.~~ ~~*Defendant*~~,	~~**SCHEDULING ORDER**~~ ~~Case No. *Case No.*~~ ~~District Judge *District Judge*~~ ~~Magistrate~~
	Proposed Scheduling Order
Plaintiff, vs. Defendant. .	Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* District Judge Magistrate Judge

~~Pursuant to~~

Under Fed. R. Civ. P. 16(b), the ~~court received~~ Local Rules of Practice, and the Order to Propose Schedule, if applicable, an Attorney Planning Meeting has been held and the Attorney Planning Meeting Report ~~filed by counsel.~~ has been completed. The following ~~matters are scheduled. The times and~~ deadlines ~~set forth herein~~ may not be modified without ~~the approval of the court and on~~ a ~~showing of good cause pursuant to~~court order consistent with Fed. R. Civ. P. 16(b)(4) and DUCivR 83-6.

ALL TIMES 4:30 PM UNLESS DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED UNLESS EXPRESSLY STATED OTHERWISE

1. PRELIMINARY MATTERS

1.		PRELIMINARY MATTERS	DATE
		Nature of claims and any affirmative defenses:	
	a.	Fed. R. Date the RuleCiv. P. 26(f)(1) Conference: *(date the conference was held?)*	*00/00/00*
	b.	Have the parties submitted the Attorney Planning Meeting Report?Participants: *(include the name of the party and attorney, if applicable)*	*00/00/00*
	c.	Deadline forFed. R. Civ. P 26(a)(1) Initial Disclosures: *(the parties have exchanged initial disclosures? or will exchange no later than the date provided)*	*00/00/00*

2.		DISCOVERY LIMITATIONS	NUMBER
	a.	Maximum number of depositions by Plaintiff(s):	*10 or #*
	b.	Maximum number of depositions by Defendant(s):	*10 or #*
	c.	Maximum number of hours for each deposition (unless extended by agreement of parties):	*7 or #*
	d.	Maximum interrogatories by any party to any party:	*25 or #*

e. Maximum requests for admissions by any party to any party: #

f. Maximum requests for production by any party to any party: #

g. The parties shall handle discovery of electronically stored information as follows:

d.	h.	The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: *Include provisions of agreement to obtain the benefit of* Under Fed. R. Civ. P. 5(b)(2)(E), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by the court's electronic-filing system or email transmission. Electronic service constitutes notice and service as required by those rules. The right to service by USPS mail is waived. Fed. R. *Evid. 502(d).*	Yes ☐	No ☐

i. Last day to serve written discovery: *00/00/00*

j. Close of fact discovery: *00/00/00*

k. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26(e): *00/00/00*

3. AMENDMENT OF PLEADINGS/ADDING PARTIES[1] DATE

a. Last day to file Motion to Amend Pleadings: *00/00/00*

b. Last day to file Motion to Add Parties: *00/00/00*

[1] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

4. **RULE 26(a)(2) EXPERT DISCLOSURES & REPORTS** **DATE**

Disclosures (subject and identity of experts)

a. Party(ies) bearing burden of proof: *00/00/00*

b. Counter disclosures: *00/00/00*

Reports

a. Party(ies) bearing burden of proof: *00/00/00*

b. Counter reports: *00/00/00*

5. **OTHER DEADLINES** **DATE**

a. Last day for expert discovery: *00/00/00*

b. Deadline for filing dispositive or potentially dispositive motions: *00/00/00*

c. Deadline for filing partial or complete motions to exclude expert testimony: *00/00/00*

6. **SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION** **DATE**

a. Likely to request referral to a magistrate judge for settlement conference: *Yes/No*

b. Likely to request referral to court-annexed arbitration: *Yes/No*

c. Likely to request referral to court-annexed mediation: *Yes/No*

d. The parties will complete private mediation/arbitration by: *00/00/00*

e. Evaluate case for settlement/ADR on: *00/00/00*

f. Settlement probability:

Specify # of days for Bench or Jury trial as appropriate. The Court will complete the shaded areas.

7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) pretrial disclosures[1]		
	Plaintiff(s):		*00/00/00*
	Defendant(s):		*00/00/00*
b.	Objections to Rule 26(a)(3) disclosures (if different than 14 days provided in Rule)		*00/00/00*
c.	Special Attorney Conference[2] on or before:		*00/00/00*

[1] The Parties must disclose and exchange any demonstrative exhibits or animations with the 26(a)(3) disclosures.

[2] The Special Attorneys Conference does not involve the court. During this conference, unless otherwise ordered by the court, counsel will agree, to the extent possible, on voir dire questions, jury instructions, and a pretrial order. They will discuss the presentation of the case, and they should schedule witnesses to avoid gaps and disruptions. The parties should mark exhibits in a way that does not result in duplication of documents. The pretrial order should include any special equipment or courtroom arrangement requirements.

d.	Settlement Conference[3] on or before:		*00/00/00*
e.	Final Pretrial Conference:	___:__ _.m.	*00/00/00*
f.	Trial _____ _____ _____ Length		
	i. Bench Trial _____ # days	___:__ _.m.	*00/00/00*
	ii. Jury Trial _____ _____ _____ # days	___:__ _.m.	*00/00/00*

8. OTHER MATTERS

Parties should fully brief all Motions in Limine well in advance of the pretrial conference.

Signed August 9, 2023.

2. PROTECTIVE ORDER

a.		The parties anticipate the case will involve the disclosure of information, documents, or other materials that will be designated as confidential.	Yes ☐	No ☐
b.		If the case will involve the disclosure of information, documents, or other materials that will be designated as confidential, then good cause exists		

[3] The Settlement Conference does not involve the court unless the court enters a separate order. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

		for the court to enter the court's Standard Protective Order (SPO) under DUCivR 26-2: *(briefly describe the need for a protective order)*
c.		If a protective order is needed and the parties **are not** using the court's SPO, then the court's SPO, in effect under DUCivR 26-2, will govern until the court adopts a different protective order. The parties will need to file a motion under DUCivR 7-1(a)(4)(D) requesting the court to enter a proposed (stipulated) protective order. The parties' stipulated protective order should identify a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must be included in the proposed protective order under Fed. R. Evid. 502(d). *(Please explain the process below.)*
d.		If the parties do not anticipate the case will involve the disclosure of information, documents, or the materials that will be designated as confidential, the parties still should identify, in the space below, a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must also be included in the proposed Scheduling Order: *(explain the process)*

3. DISCOVERY PLAN

a.		Discovery Plan: The parties agree to the following discovery plan. • If the parties disagree, clearly indicate the disagreement in the space below:	Yes ☐	No ☒
b.		Discovery Subjects: *(briefly describe the subject areas in which discovery will be needed)*		
c.		Discovery Phases: • Will discovery be conducted in phases? If so, please explain. • Will discovery be limited to or focused on particular issues? If so, please explain and identify whether discovery will be accelerated on any issue and the due dates.		
d.		Electronically Stored Information: The parties will handle discovery of electronically stored information as follows:		

4. FACT DISCOVERY

a.	Fact Discovery Limitations—		
	1.	Maximum number of depositions by Plaintiff:	*10 or #*
	2.	Maximum number of depositions by Defendant:	*10 or #*
	3.	Maximum number of hours for each deposition: (*unless extended by agreement of parties*)	*7 or #*
	4.	Maximum interrogatories by any party to any party:	*25 or #*
	5.	Maximum requests for admissions by any party to any party:	*#*
	6.	Maximum requests for production by any party to any party:	*#*
b.	Other Fact Discovery Deadlines—		
	1.	Deadline to serve written discovery:	*00/00/00*
	2.	Deadline for fact discovery to close:	*00/00/00*
	3.	Deadline for supplementation of disclosures and responses under Fed. R. Civ. P. 26(e): (*optional)*	*00/00/00*

5. AMENDING OF PLEADINGS AND JOINING OF PARTIES[4]

a.	Deadline to file a motion to amend pleadings—			
	1.	Plaintiff:		*00/00/00*
	2.	Defendant:		*00/00/00*
b.	Deadline to file a motion to join additional parties—			
	1.	Plaintiff:		*00/00/00*
	2.	Defendant:		*00/00/00*

6. EXPERT DISCOVERY

a.	Filing of Notice of Designation required by DUCivR 26-1(a)(2)—			
	1.	Parties bearing the burden of proof:		*00/00/00*
	2.	Parties not bearing the burden of proof:		*00/00/00*
b.	Service of Fed. R. Civ. P. 26(a)(2) Disclosures and Reports—			
	1.	Parties bearing the burden of proof:		*00/00/00*
	2.	Parties not bearing the burden of proof:		*00/00/00*
	3.	Rebuttal reports, if any:		*00/00/00*
c.		Deadline for expert discovery to close:		*00/00/00*

5. OTHER DEADLINES AND TRIAL-RELATED INFORMATION[5]

[4] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
[5] The court will enter the dates that are shaded.

a.	Deadline for filing dispositive or potentially dispositive motions: *(including a motion to exclude experts when expert testimony is required to prove the case)*		*00/00/00*
b.	Deadline for filing a request for a scheduling conference for the purpose of setting a trial date if no dispositive motion are filed:		*00/00/00*

SO ORDERED this _____ day of _____, 202X.

_____BY THE COURT:

_____

~~U.S. Magistrate~~

_____

_____ [Judge's Name]

_____ [Type of Judge]

~~IN~~
THE UNITED STATES DISTRICT COURT
~~FOR THE~~

DISTRICT OF UTAH

~~Plaintiff,~~ ~~v.~~	~~**PATENT CASE SCHEDULING ORDER**~~
Plaintiff, vs. Defendant.	~~Honorable~~ **Proposed Scheduling Order - Patent Case Pre-Claim Construction** Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* District Judge Magistrate Judge
~~Defendant.~~	

~~Pursuant to~~ Under Fed. R. Civ. P. 16(b~~), the Court received the~~) and the Order to Propose Schedule, if applicable, an Attorney Planning Meeting Report ~~(doc #)~~has been filed ~~by counsel~~. The ~~Court schedules the~~ following ~~matters. The parties may not modify the times and~~ deadlines ~~set forth herein~~may not be modified without ~~the approval of the Court and on~~ a ~~showing of good cause pursuant to~~ court order consistent with Fed. R. Civ. P. 16(b)(4) and

DUCivR 83-6. Plaintiff is directed to file a proposed Post-Claim Construction Scheduling Order with the remaining case deadlines within 14 days of the court entering a ruling on claim construction. The court will then set trial deadlines in the Post-Claim Construction Scheduling Order or through a case management conference.

ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED

UNLESS EXPRESSLY STATED TO THE CONTRARY

1. PRELIMINARY MATTERS AND DISCLOSURES

~~1~~a.		~~**PRELIMINARY MATTERS/DISCLOSURES**~~Deadline for plaintiff's Accused Instrumentalities Disclosure: [LPR 2.1]		*00/00/00* ~~**DATE**~~[7 days after 1st answer—Day 7/Week 1]
b.		Deadline for plaintiff's Rule 26(a)(1) Initial Disclosure: [LPR 2.2]		*00/00/00* [Day 21/Week 3]
c.		Deadline for defendant's Rule 26(a)(1) Initial Disclosure: [LPR 2.2]		*00/00/00* [Day 28/Week 4]
d.	~~a.~~ ~~b.~~ ~~c.~~ ~~d.~~	Fed. R. ~~Plaintiff's Accused Instrumentalities disclosure due [LPR 2.1]~~ ~~Plaintiff's Rule 26(a)(1) initial disclosure due [LPR 2.2]~~ ~~Defendant's Rule 26(a)(1) initial disclosure due [LPR 2.2]~~ ~~Rule~~Civ. P. 26(f)(1) Conference ~~held~~ and ~~discovery begins~~Discovery Begins: [LPR 1.2, 1.3]		~~[7 days after 1st answer—Day 7/ Week 1]~~ ~~[Day 21/ Week 3]~~ ~~[Day 28/ Week 4]~~ *00/00/00* [Day 35/-Week 5]
e.	~~e.~~	Attorney Planning Meeting Report and Proposed Scheduling Order ~~submitted~~filed: [LPR 1.2]		*00/00/00* [Day 42/-Week 6]

f.		Deadline for plaintiff to serve Initial Infringement Contentions: [LPR 2.3]		*00/00/00* [Day 63/Week 9]
g.		Deadline for defendant to serve Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability Contentions: [LPR 2.4, 2.6]		*00/00/00* [Day 77/Week 11]
h.	~~f.~~	~~Plaintiff serves Initial Infringement Contentions [LPR 2.3]~~		~~[Day 63/ Week 9]~~
	~~g.~~	~~Defendant serves~~If no infringement claims, deadline for plaintiff to serve Initial Non-Infringement, Ineligibility, Invalidity, and Unenforceability~~, and Invalidity~~ Contentions ~~*If no infringement claims,* Plaintiff serves Initial Non-Infringement, Unenforceability, and Invalidity Contentions:~~ [LPR 2.4, 2.6]		*00/00/00* [Day 77/-Week 11]
	~~h.~~	~~Final Infringement Contentions [LPR 3.1]~~		~~[Day 210/ Week 30]~~
	~~i.~~	~~Final Unenforceability and Invalidity Contentions~~ ~~[LPR 3.1]~~		~~[Day224/Week 32]~~
	~~j.~~	~~Final Non- Infringement, [LPR 3.2]~~		~~[Day 238/Week 34]~~

~~**1. DISCOVERY LIMITATIONS NUMBER**~~

~~a. Maximum number of depositions[1] by Plaintiff(s)~~

~~b. Maximum number of depositions[2] by Defendant(s)~~

~~c. Maximum number of hours for each deposition (unless extended by agreement of parties)~~

~~d. Maximum interrogatories[3] by any party to any party~~

~~e. Maximum requests for admissions by any party to any party~~

~~[1] Excluding depositions of experts.~~
~~[2] Excluding depositions of experts.~~
~~[3] An interrogatory or multiple interrogatories seeking the basis of a party's affirmative defenses, infringement contentions, or invalidity contentions counts as one interrogatory regardless of the number of affirmative defenses alleged or the number of infringed or invalid claims alleged. A party may object to the time of discovery as set forth in LRP 1.7.~~

f. Maximum requests for production by any party to any party

The Parties shall handle discovery of electronically stored information as follows:

g. The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

					DATE
	h. i. j. k.		Deadline to serve written discovery before claim construction [R. 34]: Close of fact discovery before claim construction [LPR 1.3(a)]: Disclosure of intent to rely on opinions of counsel and materials in support [LPR 1.3(c)]: Deadline to file motion for additional discovery [LPR 1.3(b)]: to amend pleadings		*00/00/00* [Day 250] [Day 280/ 112/Week 40] [PCC Day 7/ Week 1] [PCC Day 14/ Week 2] 16]
3. 4j.	a. b.		**AMENDMENT OF PLEADINGS/ADDING PARTIES**[4] Last dayDeadline to file motion to amend pleadings Last day to file motion to addjoin parties **CLAIM CONSTRUCTION PROCESS**		DATE *00/00/00* [Day 112/ Week 16] [Day 112/ Week 16] DATE

[4] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

k.	~~a.~~	~~Parties exchange proposed claim terms and claim constructions~~Deadline for ~~construction~~Final Infringement Contentions: [LPR ~~4~~3.1~~(a)~~]		*00/00/00* [Day ~~252/~~ 210/Week ~~36~~30]
l.		Deadline for final Ineligibility, Invalidity, and Unenforceability Contentions: [LPR 3.1]		*00/00/00* [Day224/Week 32]
m.	~~b.~~ ~~c.~~ ~~d.~~ ~~e.~~ ~~f.~~ ~~g.~~ ~~h.~~	~~Reach agreement to submit no more than 10 terms~~Deadline for ~~construction~~Final Non-Infringement: [LPR ~~4~~3.1~~(b)~~] ~~Parties file Cross-Motions for Claim Construction and Joint Appendix [LPR 4.2(a) & (b)]~~ ~~Parties file Simultaneous Responsive Claim Construction Briefs [LPR 4.2(c)]~~ ~~Joint Claim Construction Chart & Joint Status Report Due [LPR 4.2(f)]~~ ~~Tutorial for Court [LPR 4.4]~~ ~~Parties exchange exhibits [LPR 4.3]~~ ~~Claim Construction Hearing[5] [LPR 4.3~~]		[Day ~~259/~~ 238/Week ~~37]~~ ~~[Day 287/ Week 41]~~ ~~[Day 315/ Week 45]~~ ~~[Day 322/ Week 46]~~ ~~2:30 p.m. [Day 329/ Week 47]~~ ~~[Day 336/ Week 48]~~ ~~TBD~~34]

~~5.~~ ~~**EXPERT DISCOVERY**~~ ~~**DATE**~~

~~a.~~ ~~Parties bearing burden of proof [LPR 5.1(b)]~~ ~~[PCC Day 28/ Week 4]~~

~~b.~~ ~~Counter disclosures:~~

n.	~~c.~~	~~Counter reports [LPR 5.1(c)]~~	~~[PCC Day 56/~~	*00/00/00* [Day 250]

~~[5] Parties should contact the Court to set the date for the Claim Construction Hearing~~

	~~d.~~	~~Close of expert~~Deadline to serve written discovery ~~[LPR 5.2~~before claim construction:[Fed. R. Civ. P. 34]	~~Week 8]~~ ~~[PCC Day 91/ Week 13]~~	
~~6.~~ ~~7~~o.	 ~~a.~~ ~~b.~~ ~~c.~~ ~~d.~~ ~~e.~~	~~**DISPOSITIVE MOTIONS**~~ Deadline for fact discovery to ~~file dispositive motions required to be filed with~~close before claim construction: [LPR ~~6.2]~~ ~~Deadline to file opposition to dispositive motions filed with claim construction [LPR 6.2]~~ ~~Deadline to file reply to dispositive motions filed with claim construction [LPR 6.2]~~ ~~Deadline for filing dispositive or potentially dispositive motions [LPR 6.~~1~~]~~ ~~Deadline for filing partial or complete motions to exclude expert testimony~~ ~~**SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION/ OTHER PROCEEDINGS**~~.3(a)]		~~**DATE**~~ ~~[Day 287/ Week 41]~~ ~~[Day 315/ Week 45]~~ ~~[Day 329/ Week 47]~~ ~~[PCC Day 119/ Week 17]~~ *00/00/00* ~~**DATE**~~[Day 280/Week 40]

~~a.~~ ~~Likely to request referral to a Magistrate Judge for settlement conference:~~ ~~Yes/No~~

~~b.~~ ~~Likely to request referral to court-annexed arbitration:~~ ~~Yes/No~~

~~c.~~ ~~Likely to request referral to court-annexed mediation:~~ ~~Yes/No~~

~~d.~~ ~~Last day to seek stay pending reexamination [LPR 3.5]~~ ~~[Day 238/ Week 34]~~

~~e.~~ ~~The parties will complete private mediation/arbitration by:~~ ~~00/00/00~~

~~f.~~ ~~Evaluate case for Settlement/ADR on~~ ~~00/00/00~~

~~g.~~ ~~Settlement probability:~~

~~*Plaintiff is directed to file a new scheduling order within 14 days of ruling on claim construction. The Court will set trial deadlines in that order or through a case management conference.*~~

2. PROTECTIVE ORDER

a.		The parties anticipate the case will involve the disclosure of information, documents, or other materials that will be designated as confidential.	Yes ☐	No ☐
~~8~~b.		~~**OTHER MATTERS**~~If the case will involve the disclosure of information, documents, or other materials that will be designated as confidential, then good cause exists for the court to enter the court's Standard Protective Order (SPO) under DUCivR 26-2: *(briefly describe the need for a protective order)*		
c.		If a protective order is needed and the parties **are not** using the court's SPO, then the court's SPO, in effect under DUCivR 26-2, will govern until the court adopts a different protective order. The parties will need to file a motion under DUCivR 7-1(a)(4)(D) requesting the court to enter a proposed (stipulated) protective order. The parties' stipulated protective order should identify a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must be included in the proposed protective order under Fed. R. Evid. 502(d).~~All Motions in Limine should be filed well in advance of the Final Pretrial Conference.~~ *(Please explain the process below.)*	
d.		If the parties do not anticipate the case will involve the disclosure of information, documents, or the materials that will be designated as confidential, the parties still should identify, in the space below, a process to resolve all claims of waiver of attorney-client privilege or work-product protection, whether or not the information, documents, or other materials have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, and this process must also be included in the proposed Scheduling Order: *(explain the process)*		

3. FACT DISCOVERY

a.		Maximum number of depositions by Plaintiff:	*10 or #*
b.		Maximum number of depositions by Defendant:	*10 or #*

c.		Maximum number of hours for each deposition: (*unless extended by agreement of parties*)	*7 or #*
d.		Maximum interrogatories by any party to any party:	*25 or #*
e.		Maximum requests for admissions by any party to any party:	#
f.		Maximum requests for production by any party to any party:	#

CLAIM CONSTRUCTION

~~Signed August 9, 2023.~~

4. DEADLINES

a.		Deadline for parties to exchange proposed claim terms and claim constructions for construction: [LPR 4.2]	*00/00/00* [Day 252/Week 36]
b.		Deadline for parties to reach an agreement to submit no more than 10 terms for construction: [LPR 4.2]	*00/00/00* [Day 259/Week 37]
c.		Deadline for parties to file and serve Cross-Briefs for Claim Construction and Joint Appendix: [LPR 4.3]	*00/00/00* [Day 287/ Week 41]
d.		Deadline for parties to file Simultaneous Responsive Claim Construction Briefs: [LPR 4.3]	*00/00/00* [Day 315/Week 45]
e.		Deadline for parties to file Joint Claim Construction Chart & Joint Status Report Due: [LPR 4.3]	*00/00/00* [Day 322/ Week 46]
f.		Deadline for parties to file a Tutorial: [LPR 4.5]	[Day 329/ Week 47]
g.		Deadline for parties to exchange exhibits: [LPR 4.4]	TBD [Day 7 Before CCH
h.		Claim Construction Hearing:[6] [LPR 4.4]	TBD

SO ORDERED this _____ day of _____, 202X.

_____ BY THE COURT:

[6] Parties should file a joint motion to set the date for the Claim Construction Hearing per LPR 4.4.

~~U.S. Magistrate~~

[Judge's Name]
[Type of Judge]

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

_____ Plaintiff, vs. _____ Defendant.	**Proposed Scheduling Order - Patent Case Post-Claim Construction** _____ Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* _____ District Judge _____ Magistrate Judge

Under the Pre-Claim Construction Scheduling Order, a proposed Post-Claim Construction Scheduling Order has been filed. The following deadlines may not be modified without a court order consistent with Fed. R. Civ. P. 16(b)(4) and DUCivR 83-6.

ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED

UNLESS EXPRESSLY STATED TO THE CONTRARY

1. FACT DISCOVERY

1.	Deadline to disclose intent to reply on opinions of counsel and materials in support:	*00/00/00* [PCC Day 7/Week 1]
2.	Deadline to file motion for additional discovery: [LPR 1.3(a)]	*00/00/00* [PCC Day 14/Week 2]

2. EXPERT DISCOVERY

a.	Filing of Notice of Designation required by DUCivR 26-1(a)(2)—			
	1.	Parties bearing the burden of proof:		*00/00/00*
	2.	Parties not bearing the burden of proof:		*00/00/00*

b.	Service of Fed. R. Civ. P. 26(a)(2) Disclosures and Reports—		
	1.	Parties bearing the burden of proof: [LPR 5.1]	*00/00/00* [PCC Day 28/ Week 4]
	2.	Parties not bearing the burden of proof: [LPR 5.1]	*00/00/00* [PCC Day 56/ Week 8]
	3.	Rebuttal reports, if any: [LPR 5.1]	*00/00/00* [PCC Day 84/ Week 12]
c.	Deadline for expert discovery to close: [LPR 5.2]		*00/00/00* [PCC Day 119/Week 17]

3. DISPOSITIVE AND EXPERT MOTIONS[1]

a.		Deadline for filing dispositive or potentially dispositive motions: [LPR 6.1]	*00/00/00* [PCC Day 147/Week 21]
b.		Deadline for filing partial or complete motions to exclude expert testimony:	*00/00/00* [PCC Day 147/Week 21]
c.		Deadline for filing a request for a scheduling conference for the purpose of setting a trial date if no dispositive motion are filed:	*00/00/00*

SO ORDERED this _____ day of _____, 202X.

BY THE COURT:

_____
[Judge's Name]
[Type of Judge]

[1] The court will enter the dates that are shaded.

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
DIVISION

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

[

Plaintiff],

vs.

[vs.

Defendant].

Proposed Scheduling Order in an Administrative Case No.

[PROPOSED] SCHEDULING ORDER IN AN ADMINISTRATIVE CASE UNDERUnder DUCivR 7-4

HonorableCase Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)*

District Judge

Magistrate Judge

1. Agency Decision(s) Challenged: [List the dates of the decision(s) challenged and a

1. brief summary of those decisions]

2. Plaintiff's Grounds for Challenging Agency Decision: [*Briefly* state the grounds for

2. challenging each agency decision]

3. Agency's Reasons in Support of Agency Decision: [*Briefly* state the bases on

3. which the agency will defend its decision(s)]

4. Dates of Filing of Relevant Documents:

Motion to Amend Complaint: ____/____/____ ____/____/____

Amended Agency Statement: ____/____/____ ____/____/____

Administrative Record: ____/____/____ ____/____/____

5. Objections to contents of administrative record shall be filed by: ____/____/____ ____/____/____

4. Responses to objections to administrative record shall be filed by: ____/____/____

~~5.~~ ___/___/___

7. Non-dispositive pre-merits motions by: ___/___/___

~~6.~~ ___/___/___

8. Plaintiff shall file an "Opening Brief" by: ___/___/___

~~7.~~ ___/___/___

9. The agency shall file an "Opposition Brief" or "Commissioner's Response Brief" by: ___/___/___

~~8.~~ ___/___/___

10. Plaintiff may file a "Reply Brief" no later than: ___/___/___

~~9.~~ ___/___/___

11. Oral argument on the parties' briefs is scheduled for: ___/___/___

6. ___/___/___

12. Amendments to this scheduling order shall only be approved for good cause shown. ~~DATED this day of 2~~.

~~United States District~~**SO ORDERED** this _____ day of _____, 202X.

BY THE COURT:

[Judge's Name]
[Type of Judge]

APPROVED:

_____
~~Counsel~~
Attorney for Plaintiff

_____
~~Counsel~~
Attorney for ~~Agency~~

~~2~~Defendant

THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

_____ Plaintiff, vs. _____ Defendant.	**Proposed Scheduling Order in an ERISA Case** _____ Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* _____ District Judge _____ Magistrate Judge

Under Fed. R. Civ. P. 16(b), the Local Rules of Practice, and the Order to Propose Schedule, if applicable, an Attorney Planning Meeting has been held and the Attorney Planning Meeting Report has been completed. The following deadlines may not be modified without a court order consistent with Fed. R. Civ. P. 16(b)(4) and DUCivR 83-6.

ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED

UNLESS EXPRESSLY STATED TO THE CONTRARY

1. PRELIMINARY MATTERS

a.		Fed. R. Civ. P. 26(f)(1) Conference: *(date the conference was held)*		*00/00/00*
b.		The parties agree that ERISA governs this case and the court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. §§ 1132(e)(1) & 1132(f):	Yes ☐	No ☐
c.		Fed. R. Civ. P 26(a)(1) Initial Disclosures and pre-		*00/00/00*

		litigation appeal record: *(the parties have exchanged initial disclosures and the prelitigation appeal record or will exchange no later than the date provided)*		
d.		Under Fed. R. Civ. P. 5(b)(2)(E), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by the court's electronic-filing system or email transmission. Electronic service constitutes notice and service as required by those rules. The right to service by USPS mail is waived.	Yes ☐	No ☐

2. DISCOVERY LIMITATIONS[1]

a.		Discovery is not needed in this case:	Yes ☐	No ☐
b.		The parties agree that they will serve discovery requests consistent with the principles the Tenth Circuit has established in *Murphy v. Deloitte & Touche Grp. Ins. Plan*, 619 F.3d 1151, 1162 (10th Cir. 2010) (arbitrary and capricious standard of review); *Jewell v. Life Ins. Co. of N. Am.*, 508 F.3d 1303, 1309 (10th Cir. 2010), cert. denied, 553 U.S. 1079 (2008) (de novo standard of review):	Yes ☐	No ☐
c.		Deadline for the parties to file a motion under DUCivR 7-1(a)(4)(D) within 45 days of the production of initial disclosures (which shall include the entire administrative record) requesting that the court determine the completeness of the administrative record or permissibility of discovery relating to either a conflict of interest or to the amount at issue, if there is a dispute as to these issues:		*00/00/00*
d.		The parties will handle discovery of electronically stored information as follows:		

3. AMENDING OF PLEADINGS AND JOINING OF PARTIES[2]

a.	Deadline to file a motion to amend pleadings—			
	1.	Plaintiff:		*00/00/00*

[1] The parties should be prepared to have the case ready for decision no later than approximately 1 year after filing of the action.

[2] Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

	2.	Defendant:		*00/00/00*
b.	Deadline to file a motion to join additional parties—			
	1.	Plaintiff:		*00/00/00*
	2.	Defendant:		*00/00/00*

4. OTHER DEADLINES AND TRIAL-RELATED INFORMATION[3]

a.	Deadline for the parties to file cross-motions for summary judgment (regardless of whether any discovery is or is not allowed) consistent with DUCivR 7-1(a)(4)(B):		*00/00/00*
b.	Deadline for filing a request for a scheduling conference for the purpose of setting a trial date if no dispositive motion are filed:		*00/00/00*

SO ORDERED this _____ day of _____, 202X.

BY THE COURT:

_____
[Judge's Name]
[Type of Judge]

[3] The court will enter the dates that are shaded.

~~IN~~
THE UNITED STATES DISTRICT COURT

~~FOR THE~~

DISTRICT OF UTAH

~~_____,~~ ~~_____~~ ~~_____ Plaintiffs,~~ ~~vs.~~ ~~_____,~~ ~~_____~~ ~~_____ Defendants.~~ _____ Plaintiff, _____ vs. _____ Defendant.	**STANDARD PROTECTIVE ORDER** **(DUCivR 26-2)** _____ ~~Civil No.~~ ~~Honorable~~ Case Number: *(including assigned judge initials and referred magistrate judge initials, if applicable)* _____ District Judge _____ Magistrate Judge

Under Fed. R. Civ. P.

~~Pursuant to Rule~~ 26(c) ~~of the Federal Rules of Civil Procedure and for good cause,~~

~~IT IS HEREBY ORDERED THAT:~~

~~1. Scope of Protection~~

~~This~~and DUCivR 26-2, and consistent with the parties' representations in the Attorney Planning Meeting Report, the court finds, to expedite the exchange of discovery material and preserve the confidentiality of information, good cause exists for entry of the Standard Protective Order ~~shall govern any record~~(SPO) governing the confidentiality of information ~~produced in this action and designated pursuant~~. The SPO applies to ~~this Standard Protective Order, including~~ all designated ~~deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions~~information, documents, and other ~~discovery~~ materials~~, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of~~ produced in this matter consistent with the disclosure or discovery~~.~~

~~This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.~~

~~This Standard Protective Order shall apply to the~~ duties created by the Federal Rules of Civil Procedure and the Local Rules of Practice. The SPO applies to parties and ~~to any nonparty~~nonparties from whom discovery may be sought, when the information needs protection.

(A) DEFINITION AND DESIGNATION OF CONFIDENTIAL OR ATTORNEYS' EYES ONLY

Designation of information under this SPO must be made by marking or labeling the information, documents, or other materials CONFIDENTIAL or ATTORNEYS' EYES ONLY, in a manner that will not interfere with its legibility.

(1) CONFIDENTIAL. A person or entity who ~~desires the protection of this Protective Order.~~

~~Nonparties~~produces information, documents, or other materials may ~~challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-~~ designate~~.~~

~~2. Definitions~~

~~(a) The term PROTECTED INFORMATION shall mean~~ them as CONFIDENTIAL when they in good faith believe the information, documents, or materials contains trade secrets or nonpublic proprietary confidential ~~or proprietary~~ technical, scientific, financial, business, health, or medical information ~~designated as such by the producing party~~, including confidential health information under the Health Insurance Portability and Accountability Act of 1996 and its enabling regulations.

~~(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS~~ (2) ATTORNEYS' EYES ONLY. A person or entity who produces information, documents, or other materials ~~**EYES ONLY**, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY~~ may ~~be used only for the following types of past, current, or future PROTECTED INFORMATION: (1)~~ designate them as ATTORNEYS' EYES ONLY when they in good faith believe the information, documents, or other materials contain:

(a) sensitive technical information~~,~~ including current research~~,~~ and development ~~and~~, manufacturing information, and patent prosecution information~~, (2)~~ ;

(b) sensitive business information~~,~~ including highly sensitive financial or marketing information and the identity of suppliers, distributors~~,~~ and customers (potential ~~or~~and actual ~~customers, (3) ~~);

(c) competitive technical information~~,~~ including technical analyses or comparisons of competitor's products~~, (4) ~~;

(d) competitive business information~~,~~ including ~~non-public~~nonpublic financial or marketing analyses or comparisons of competitor's products and strategic product planning~~, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm. ~~; or

~~(c) The term~~ (e) any other CONFIDENTIAL ~~INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" ~~information~~.~~

~~(d) For entities covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information. Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45~~

C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

(1) names;

(2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;

(3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;

(4) telephone numbers;

(5) fax numbers;

(6) electronic mail addresses;

(7) social security numbers;

(8) medical record numbers;

(9) health plan beneficiary numbers;

(10) account numbers;

(11) certificate/license numbers;

(12) vehicle identifiers and serial numbers, including license plate numbers;

(13) device identifiers and serial numbers;

(14) web universal resource locators ("URLs");

(15) internet protocol ("IP") address numbers;

(16) biometric identifiers, including finger and voice prints;

(17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until seven (7) days after the executed Disclosure Agreement is served on the other party.

~~(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to~~ the producing party ~~and received no less than seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in~~ reasonably and in good faith ~~to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within seven (7) days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.~~

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the Disclosure Agreement or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or factsbelieves would likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.cause harm if disclosed to anyone other than those listed in section (B)(1)(a)-(h).

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

~~CONFIDENTIAL INFORMATION~~

~~(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:~~

~~CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY~~

~~(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.~~

~~(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY~~(3) A person or entity may designate deposition testimony or deposition exhibits as CONFIDENTIAL or ATTORNEYS' EYES ONLY when the deposition is taken by requesting the court reporter ~~to~~ so designate in the transcript ~~at the time~~ or within 30 days of receipt of the deposition~~.~~

~~(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or~~

~~CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.~~

~~(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the~~ transcript ~~appropriately~~by the party making the designation.

~~(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.~~

~~(h) In multi-party~~(4) In multiparty cases, ~~Plaintiffs and/~~a person or ~~Defendants shall further be able to~~entity may also designate information, documents, or other materials as CONFIDENTIAL ~~INFORMATION –~~ NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL ~~INFORMATION –~~ NOT TO BE DISCLOSED TO OTHER DEFENDANTS ~~for documents that shall not be disclosed to other parties~~.

(~~5. Disclosure and Use of Confidential Information~~

~~Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such~~) A nonparty producing information ~~received from the disclosing party in confidence, shall use~~(including testimony), documents, or other materials, or as required by a subpoena, may designate the information ~~only for purposes of this action and for no other action, and shall not use it for any business~~(including testimony), documents, or other ~~commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type)~~ materials as CONFIDENTIAL or ~~patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.~~ATTORNEYS' EYES ONLY.

~~In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.~~

~~6. Qualified Recipients~~

~~For purposes of this Order, "Qualified Recipient" means~~

~~(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:~~

~~(B)~~ DISCLOSURE AND USE OF INFORMATION, DOCUMENTS, OR OTHER MATERIALS DESIGNATED AS CONFIDENTIAL OR ATTORNEYS' EYES ONLY

(1) ~~Outside~~ CONFIDENTIAL. The parties and counsel ~~of record~~ for the parties ~~in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;~~

~~(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);~~

~~(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;~~

~~(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above;~~

~~(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to~~ must not disclose ~~the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking~~ or permit the disclosure ~~may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the~~

~~document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and~~of any information, documents, or other materials designated as CONFIDENTIAL by any other party or nonparty under this SPO, except that disclosures may be made to the following:

~~(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the terms of this Order.~~

~~(b) FOR CONFIDENTIAL INFORMATION:~~

~~(1) Those persons listed in paragraph 6~~(a~~);~~

~~(2) In-house~~) counsel for a party~~ to this action~~, who are acting in a legal capacity and ~~who~~ are actively engaged in ~~the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary~~this matter;

~~(3) The~~ (b) court personnel;

(c) court-appointed special masters;[1]

(d) court reporters, recorders, and videographers engaged for depositions;

(e) court-appointed or jointly-selected mediator or arbitrator;

1 A court-appointed special master who is currently serving as a magistrate judge qualifies as court personnel under section (B)(1)(b).

(f) technical advisor, including an outside expert, consultant, or investigator, who is not a party to the action, not presently employed by the receiving party or a company affiliated through common ownership, but has been retained to provide technical or other expert services (e.g., expert testimony or assist in litigation or trial preparation), but no disclosure shall be made until a signed Acknowledgment and Agreement to be Bound (Attachment A) has been provided to the receiving party;

(g) deposition and trial witnesses in connection with their testimony in the lawsuit;

(h) independent providers of document reproduction, electronic discovery, or other litigation services retained or employed specifically in connection with this litigation;

(i) the insurer of a party to the litigation and their employees ~~of such insurer~~ to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; ~~and~~

~~(4) Representatives~~(j) a party's representatives, officers, ~~or~~and employees ~~of a party~~ as necessary to assist ~~outside~~ counsel with this litigation~~.~~; and

(k) if those listed in sections B(1)(a)-(j) engage their partners, associates, employees, staff, or personnel to render reasonably necessary professional services, then these individuals must advised of and subject to the provisions of this SPO and must hold the information, documents, or other materials in confidence.

(2) ATTORNEYS' EYES ONLY INFORMATION. The parties and counsel for the parties may permit the disclosure of any information, documents, or other materials designated as ATTORNEYS' EYES ONLY by any other party or nonparty under this SPO to those identified in section (B)(1)(a)-(h).

(3) Information, documents, or other materials designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY under this SPO must not be used for any purpose whatsoever other than preparing for and conducting the litigation in which the information, documents, or other materials were disclosed (including appeals). The parties must not disclose information, documents, or other materials designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified. Nothing in this SPO prohibits a receiving party that is a government agency from following its routine uses and sharing the information, documents, or other materials with other government agencies or self-regulatory organizations as allowed by law.

(C) INADVERTENT FAILURE TO DESIGNATE AND INADVERTENT DISCLOSURE

(1) Inadvertent Failure to Designate. If a party inadvertently discloses information, documents, or other materials containing CONFIDENTIAL or ATTORNEYS' EYES ONLY information without marking or labeling it as such, the information, documents, or other materials do not lose their protected status by production. The producing party must take all steps reasonably required to assure its continued confidentiality, including: (a) providing written notice to the receiving party within 10 days of the discovery of the inadvertent production; (b) identifying the information, document, or other materials in question; and (c) simultaneously providing appropriately designated substitute copies. After receiving notice and the production of substitute copies, the receiving party must destroy or return undesignated information, documents, or other materials.

(2) Inadvertent Disclosure of Information Covered by Attorney-Client Privilege or Work Product Protection in Information, Documents, or Other Materials Designated CONFIDENTIAL or ATTORNEYS' EYES ONLY. Whether inadvertent or otherwise, the disclosure of any information, documents, or other materials that are subject to an objection based on attorney-client privilege or work-product protection will not be

deemed to waive a party's claim to its attorney-client privilege or work-product protection and will not estop that party or the privilege holder from designating the information or documents as attorney-client privileged or subject to work-product protection at a later date. This SPO shall be interpreted to provide the maximum protection allowed under Fed. R. Evid. ~~7. Use of Protected Information~~

~~(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that are served or filed include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must be appropriately designated pursuant to paragraphs 4(a) and (b) and governed by DUCivR 5-3.~~

~~(b) All documents, including attorney notes and abstracts, that contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).~~

~~(c) Documents, papers, and transcripts that are filed with the court and contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and filed in accordance with DUCivR~~ 502(d).

If a person or entity inadvertently discloses information, documents, or other materials that it believes is subject to a claim of attorney-client privilege or work-product protection, the producing party may give prompt written notice to the receiving party that the information, documents, or other materials is subject to a claim of attorney-client privilege or work-product protection and may request that it be returned to the producing party. Upon notice, regardless of whether the receiving party agrees with the claim of privilege or work-product protection, the receiving party must: (a) return the information

at issue; (b) not use or disclose the materials until the matter is resolved; and (c) take reasonable steps to retrieve the information if the receiving party further disclosed it.

If the receiving party disputes that the information at issue is subject to attorney-client privilege or work-product protection, the receiving party or entity must make reasonable efforts to resolve the dispute without court assistance consistent with DUCivR 37-1(a). If the dispute cannot be resolved, the receiving party may move the court, under seal, within 45 days of the prompt written communication sent to the opposing party. The motion must follow the requirements of DUCivR 7-1(a)(4)(D). The producing party must preserve the information at issue until the claim is resolved.

(D) MAINTENANCE OF DESIGNATION

(1) Except as provided in section (B), counsel for the parties must keep all information, documents, or other materials designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY that are received under this SPO secure within their exclusive possession and must place the information, documents, or other materials in a secure area.

(2) All documents, including attorney notes, abstracts, and copies, that contain another's CONFIDENTIAL or ATTORNEYS' EYES ONLY information must be handled as if they were so designated.

(3) If any discovery responses, deposition transcripts, memoranda, or any other papers filed with the court include CONFIDENTIAL or ATTORNEYS' EYES ONLY information, they must be so designated and filed consistent with DUCivR 5-3.

(4) If a filing contains information, documents, or other materials that were designated CONFIDENTIAL or ATTORNEYS' EYES ONLY by a nonparty, the party making the filing must provide prompt written notice of the filing to the nonparty.

(5 ~~3.~~

~~(d) To the extent that~~) If information, documents, or other materials are reviewed by a receiving party ~~prior to~~before production, any knowledge learned during the review ~~process~~ will be treated by the receiving party as ~~CONFIDENTIAL INFORMATION – ATTORNEYS~~ATTORNEYS' EYES ONLY until ~~such time as~~ the ~~documents have~~information has been produced, at which time any ~~stamped~~

~~classification will control. No~~affixed designation controls. Absent the express permission of the producing party, or as otherwise permitted by an order or rule of the court, no photograph or any other means of duplication, including ~~but not limited to~~ electronic means, ~~of materials provided for review prior to production~~ is permitted before the ~~documents are~~information is produced with the appropriate ~~stamped classification~~designation. Any such duplicate will be treated by the receiving party as having the same designation as the original. There will be no waiver of confidentiality by the inspection of confidential information, documents, or other materials before they are copied and designated.

~~(e) In the event that any~~(6) If a question is asked at a deposition ~~with respect to which~~and a party ~~asserts that~~claims the answer requires the disclosure of CONFIDENTIAL ~~INFORMATION~~ or ~~CONFIDENTIAL INFORMATION – ATTORNEYS~~ATTORNEYS' EYES ONLY~~, such question shall nonetheless~~ information, the following must occur:

(a) every person present must be ~~answered~~advised of the SPO by the party asserting confidentiality;

(b) all persons who are not allowed to receive the information under this SPO, other than the witness ~~fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of~~, must leave the deposition while the information designated as CONFIDENTIAL ~~INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than~~ or ATTORNEYS' EYES ONLY is disclosed; and

(c) the witness~~, shall leave the room during the time in which this information is disclosed or discussed~~ must answer the question completely.

~~(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and,~~

in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a (7) If a receiving party is served a subpoena or court order, issued in a separate action, that seeks CONFIDENTIAL or ATTORNEYS' EYES ONLY designated information, documents, or other materials, the receiving party must give prompt written notice to counsel for the producing party to allow a meaningful opportunity to challenge the subpoena or court order before the deadline to comply. No compulsory disclosure to nonparties of CONFIDENTIAL or ATTORNEYS' EYES ONLY designated information, documents, or other materials under this SPO is deemed a

waiver of any claim of confidentiality, except when there is a judicial determination finding otherwise.

(E) CHALLENGES TO A DESIGNATION.

(1) A party may challenge the producing party's designation of CONFIDENTIAL or ATTORNEYS' EYES ONLY at any time. ~~A~~

(2) To challenge the designation of CONFIDENTIAL or ATTORNEYS' EYES ONLY, the receiving party must make reasonable efforts, without court assistance, to resolve the dispute. At a minimum, those efforts must include:

(a) a prompt written communication sent to the producing party identifying the information, documents, or other materials at issue and specifying why they believe the designation is improper; and

(b) a request that the producing party meet and confer, including suggested dates and times.

(3) If the parties are unable to resolve the dispute after engaging in reasonable efforts in section (E)(2)(a)-(b), the receiving party may file a motion consistent with DUCivR 7-1(a)(4)(D). The motion must include a certification that states:

(a) the parties made reasonable efforts to reach agreement on the disputed matters;

(b) the date, time, and method of the reasonable efforts; and

(c) the names of all participating parties or attorneys.

(4) The producing party bears the burden of proving that the designation is proper. The producing party's failure ~~of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.~~

~~(b) **Any receiving party may disagree** with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. **In that case, any**~~

receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation of a document or documents, stating with particularity the reasons for that request, and specifying the category to which the challenged document(s) should be de-designated. The producing party shall then have seven (7) days from the date of service of the request to:

(i) advise the receiving parties whether or not it persists to engage in reasonable efforts to resolve the dispute or respond to an appropriately filed motion may result in such the designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within seven (7) days after service of the request under subparagraph (b), the information will be de-designated to the category as requested by the receiving party. If, however, the request under subparagraph (b) above is responded to under subparagraph (b)(i) and (ii), within seven (7) days the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall

not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. **(F) CONCLUSION OF LITIGATION**

At the conclusion of the litigation, a party may request that all information, documents, or other materials that were not filed with the court and not received into

evidence and were designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY under this SPO, but must be returned to the originating party or, if the parties so stipulate, destroyed, unless otherwise provided by law.

Notwithstanding the requirements of this paragraph, a party may retain a complete set of all documents filed with the court, subject to all other restrictions of this SPO.

~~R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.~~

~~11. Inadvertent Disclosure~~

~~In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or~~

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party **shall**must notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the **Court**court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party

shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order**(G) CONTINUING JURISDICTION OF COURT TO ENFORCE THE SPO**

After the termination of this action, the Courtcourt will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that

~~is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.~~

SPO.

_____SO ORDERED AND ENTERED BY THE COURT ~~PURSUANT TO~~UNDER DUCivR 26-2 AND EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

_____,	DISCLOSURE AGREEMENT
Plaintiffs,	Honorable
vs.	Magistrate Judge
_____,	
Defendant.	

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to any person not entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

Signed by Recipient

Name (printed)

Date:

ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that they have read the court's Standard Protective Order attached hereto and dated _____ in the case captioned _____, understand the terms and agree to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Utah in matters relating to this Standard Protective Order and understands that the terms of the Standard Protective Order obligate them to use information, documents, or other materials designated as CONFIDENTIAL in accordance with the Standard Protective Order solely for the purposes of the above-captioned action, and not to disclose information, documents, or other materials designated as CONFIDENTIAL to any other person, firm, or concern, except in accordance with the provisions of the Standard Protective Order.

The undersigned acknowledges that violation of the Standard Protective Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

Date: _____

_____
Signature