

# UNITED STATES DISTRICT COURT DISTRICT OF UTAH

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



December 1, 2019

### **New Rule and Amendments to the Local Rules of Practice**

The following new rule and amendments to the Local Rules of Practice for the District of Utah were proposed by the Advisory Committee on the Local Rules of Practice and adopted by the court after a public comment period. The new rule and adopted amendments are:

#### **DUCivR 5-1**

##### **Filing of Papers**

Adds a new provision allowing pro se litigants to file a motion for permission to send documents by email to the clerk's office for filing, provided that the filer complies with certain requirements. The rule also permits the court to revoke this privilege if it is abused.

In addition, this amendment clarifies that courtesy copies of conventionally filed documents are not required unless specified in the judges' preferences as listed on the court's website.

#### **DUCivR 5-2**

##### **Filing Cases Under Court Seal**

Clarifies that after a complaint or other initiating document has been provided to the court in paper and on a digital storage medium, all subsequent documents should be submitted to the court in PDF format on a digital storage medium, and no paper filing is necessary. The rule was also edited for clarity.

#### **DUCivR 15-1**

##### **Amended Pleadings**

Adds a requirement that a party moving under Fed. R. Civ. P. 15(a)(2) must attach as an exhibit to a motion for leave to amend not only the proposed amended pleading but also a redlined version of the proposed amended pleading, comparing it with the pleading sought to be amended. Pro se litigants are exempt from this requirement.

#### **DUCivR 24-1**

##### **Notification of Claim of Unconstitutionality**

This rule was renumbered from DUCivR 24-1 to DUCivR 5.1-1. The language was also edited to be more precise.

**DUCivR 30-2**

**Notices Required for Depositions Under Fed. R. Civ. P. 30(b)(6)**

This new rule requires that a 30(b)(6) notice shall be served at least 28 days prior to the scheduled deposition and at least 45 days before the discovery cutoff date. The rule provides deadlines for serving written objections and for seeking resolution from the court. It also provides that a party may serve only one notice on any particular party or non-party, and it limits the number of topics and the total time for depositions. The parties may agree to different limitations or the court may order otherwise on a showing of good cause.

**DUCivR 83-1.4**

**Attorneys Substitution and Withdrawal of Attorney**

Clarifies that an attorney who is an active member of this court may replace another attorney of record in a pending case by filing a Notice of Substitution of Counsel. Also, clarifies when a Notice of Withdrawal should be filed instead of a Motion to Withdraw.

**DUCrimR 5-2**

**Pretrial Services Report**

This rule has been updated to incorporate the requirements set forth in General Order 17-007.

**LPR 2.5**

**Document Production Accompanying Initial Invalidity Contentions**

Corrects citations to other patent rules.

**(a) Electronic Filing.**

Generally, registered ~~e-filers~~efilers must electronically sign and file documents, as set forth in the CM/ECF and E-filing Administrative Procedures Manual (ECF Procedures Manual) adopted by the court to govern the court's electronic case filing system. The ECF Procedures Manual is available at <http://www.utd.uscourts.gov>.

**(b) Email Filing.**

- (1) Unrepresented parties may move the court for permission to send documents by email to the clerk's office for filing. A form for the motion may be found on the court's website. The motion must include a verification that:
  - (A) the party will submit documents in PDF format as outlined in Sections II(C)(3) and (4) of the ECF Procedures ~~governing~~ Manual;
  - (B) the party will provide a valid email address that will be used to submit documents for filing and to receive notices of case filings from the court;
  - (C) the party will use an appropriate digital/electronic ~~filing are available for review, downloading, and printing~~ signature on filings, as outlined in Section II(A) of the ECF Procedures Manual; and
  - (D) the party will comply with the formatting requirements outlined in Local Rule DUCivR 10-1 and Section II(B) of the ECF Procedures Manual.
- (2) If the motion is granted, the party may email documents and exhibits for filing to the clerk's office at [utdecf\\_clerk@utd.uscourts.gov](mailto:utdecf_clerk@utd.uscourts.gov). The email must include the case number and document name in the subject line. The clerk will return a confirmation email to the party and then file the documents in the case.
- (3) Documents will be considered filed as of the date the email is received by the clerk.
- (4) On motion by any party, or sua sponte, the court may revoke a party's ability to file by email after a determination that the privilege has been abused. Examples of circumstances in which a party abuses the privilege of email filing include:
  - (A) repeatedly sending nonconforming documents or exhibits to the clerk for filing;
  - (B) repeatedly sending incomplete documents to avoid missing a deadline;

(C) sending documents that needlessly complicate the proceedings or harass the court, the clerk, or the opposing party; or

(D) sending documents containing viruses, worms, ransomware, spyware, malware, or other files compromising the security of the court's computer systems.

**(c) Conventional Filing of Pleadings and Papers.**

In all other circumstances, all pleadings and other case-related documents must be filed ~~with the clerk at the office of record in in the~~ Salt Lake City ~~clerk's office either~~ (i) in person during the business hours set forth in DUCivR 77-1 or (ii) by mail. ~~At the time of~~ When filing ~~of~~ a document pursuant to subparagraphs (i) and (ii), the clerk will require:

~~(1) the original of all proposed orders, certificates of service, and returns of service; and~~

~~(2) the original and one (1) copy of all pleadings, motions, and other papers.~~

~~When court is in session elsewhere in the district, pleadings, motions, proposed orders, and other pertinent papers may be filed with the clerk or with the court at the place where court is being held. papers. Courtesy copies are not required unless specified in the judge's preferences on the court's website. Parties must clearly label courtesy copies on the caption page.~~

**(d) Filing Time Requirements.**

~~(1) Unless otherwise directed~~ If no filing time is specified in an applicable rule and no deadline has been ordered by the court, all documents pertaining to a court proceeding must be filed with the clerk a minimum of **two (2) business days** before the scheduled proceeding.

~~(2) For documents served by mail, other than the complaint, the court will presume the postmark on is the envelope to be the effective date the party filed the document of filing or service.~~ If the postmark is illegible or missing, the ~~court will presume the document to have been filed~~ filing or service date is presumed to be three (3) days ~~prior to the date stamp indicating before~~ receipt by the court. Response time will be calculated from the date stamp indicating the court received the papers. For papers served on a party that do not need to be filed with

~~the court, the response time will be calculated from the date the party received the papers in accordance with Fed. R. Civ. P 33(b)(2), 34(b)(2)(A), and 36(a)(3).~~

**(a) General Rule.**

~~The Court~~ records ~~of the court~~ are presumptively open to the public. ~~The sealing of new and pending civil cases is highly discouraged.~~ Unless restricted by statute or court order, the ~~public shall have access to all documents filed with the court and to all court proceedings.~~ On motion of a party and a showing of good cause, sealing of civil cases is highly discouraged. In extraordinary circumstances, a judge may order a case to be sealed.

**(b) Sealing of New Cases.**

~~(1) — On Ex Parte Motion. In extraordinary circumstances, and only upon a judge's order by granting an ex parte party's motion of the plaintiff or petitioner, an entire case may be sealed at the time it is filed. A motion to file a case under seal must be filed contemporaneously with the complaint. The complaint will remain under seal unless and until the motion is denied sua sponte.~~

**(b) (2) Civil Actions for False Claims.** ~~When an individual files a civil action on behalf of the individual and the government pursuant to~~

~~The clerk will seal actions filed under 31 U.S.C. § 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions, as required by 31 U.S.C. §3730(b)(2). The government may be approved by seek an extension of the seal by filing an ex parte motion.~~

**(c) Procedures.**

(1) Sealing a New Case. To seal a new case, a party must file in the Salt Lake City clerk's office:

(A) A paper copy of the complaint or initiating document;

(B) A paper copy of a motion identifying the statute, rule, case law, or other basis permitting the court to seal the case; and

(C) Electronic PDF-formatted copies of each document on motion of a clearly labeled digital storage medium, consistent with those approved in the court's the ECF Procedures Manual.

(2) Sealing an Existing Case.

A party must file a motion to seal the case. The motion must identify the statute, rule, case law, or other basis permitting the court to seal the government case.

~~(e)~~ **Sealing of Pending Cases.**

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

~~(d)~~ **Procedures for (3) Filing Sealed Cases and Documents in After a Case Has Been Sealed Cases.**

~~Documents initiating or filed in a sealed case must be submitted to the clerk's office~~  
A party must file, in paper, along with the Salt Lake City clerk's office, an electronic PDF-formatted copy of the document(s) on CD, DVD, or other a clearly labeled digital storage device medium, consistent with the procedures outlined those approved in the court's CM/ECF and E-Filing Administrative Procedures Manual. Parties are not required to file paper copies of the documents.

~~(d)~~ ~~(e)~~ **Access to Sealed Case Dockets and Documents. Cases.**

The ~~clerk~~clerk's office will not provide access to or information contained in a sealed case ~~dockets or provide copies of sealed documents,~~ unless ~~ordered~~otherwise directed by the court.

**DUCivR 15-1**

**AMENDED ~~COMPLAINTS~~ PLEADINGS**

- (a)** ~~Parties~~ A party moving under Fed. R. Civ. P. 15(a)(2) for leave to amend a ~~complaint~~pleading must attach the following as exhibits to the motion:
- (1) the proposed amended ~~complaint as~~pleading, and
  - (2) a redlined version of the proposed amended pleading comparing it with the pleading sought to be amended.
- (b)** A party proceeding without an exhibit to the motion for leave to file, attorney is exempt from the requirements of subsection (a)(2) of this rule.
- (c)** A party who has been granted leave to file must subsequently file the amended ~~complaint~~pleading with the court. The amended ~~complaint~~pleading filed must be the same ~~complaint~~pleading proffered to the court; in subsection (a)(1), unless the court has ordered otherwise.



**DUCivR 245.1-1      NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY**

**(a)    An Act of Congress.**

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

\_\_\_\_\_ Upon receipt of such notice, the clerk, on behalf of the court, will ~~file~~send a certificate ~~with~~to the Attorney General of the United States and the United States Attorney for the District of Utah in substantially the following form:

*The United States District Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, Title \_\_\_\_\_, Section \_\_\_\_\_, United States Code (or other description) is drawn into question in the case of*

\_\_\_\_\_, \_\_\_\_\_ v.

\_\_\_\_\_, \_\_\_\_\_, Case No.

\_\_\_\_\_, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(a) of the United States Code, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will ~~send copies~~file a copy of the certificate ~~to the United States attorney for the District of Utah and to the district judge to whom~~in the case ~~is assigned~~docket.

**(b)    A Statute of a State.**

Whenever the constitutionality of any statute of a state affecting the public interest is, or is intended to be, drawn into question in any suit or proceeding to which the state or any of its agencies, officers, or employees, is not a party, counsel for the party raising or intending to raise such constitutional issue must promptly notify the clerk, in writing,

specifying the act or its provisions, a reference to the title and section of the statute, if any, of which the act is part, and a description of the claim of unconstitutionality.

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

*The United States District Court for the District of Utah hereby certifies to the Attorney General of the State of \_\_\_\_\_, that the constitutionality of Title \_\_\_\_\_, Chapter \_\_\_\_\_, Section \_\_\_\_\_, (or other description) is drawn in question in the case of*

*\_\_\_\_\_ v. \_\_\_\_\_, Case No. \_\_\_\_\_, to which neither the State of \_\_\_\_\_, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(b) of the United States Code, the State of \_\_\_\_\_ is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.*

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

**DUCivR 30-2**

**NOTICES REQUIRED FOR DEPOSITIONS UNDER**

**FED. R. CIV. P. 30(b)(6)**

The 30(b)(6) notice must be served at least 28 days prior to the scheduled deposition and at least 45 days before the discovery cutoff date. Within 7 days of being served with the 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.

Unless otherwise agreed to by the parties or ordered by the Court upon a showing of good cause, the notice shall not exceed more than 20 topics, including subparts, the deposition of all corporate representatives produced in response to the notice must not exceed 7 hours in length, and a party may not serve more than one notice on any particular party or non-party. If a request for documents accompanies the notice, it will be subject to the provisions of Rule 34 of the Federal Rules of Civil Procedure. If a subpoena duces tecum accompanies the notice, it will be subject to the applicable Federal Rules of Civil Procedure and Local Rules.

**DUCivR 83-1.4      ATTORNEYS — SUBSTITUTION AND WITHDRAWAL ~~OR~~  
~~REMOVAL~~ OF ATTORNEY**

**(a)      Substitution of Counsel.**

An attorney, who is an active member of this court, may replace another attorney of record in a pending case 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) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record. ~~(a) — Withdrawal Leaving a Party Without Representation.~~

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

An attorney may withdraw from representing a party if the party continues to be represented by other counsel who has already entered an appearance. 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.

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

- (1) No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except upon submission of:
  - (A)- A Motion to Withdraw as Counsel in the form prescribed by the court that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no Notice of Substitution of Counsel has been filed, the client must file a ~~notice~~Notice of ~~appearance~~Appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court, (iv) notice that, pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company, or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice

in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties; and

(B)- A proposed Order Granting Motion to Withdraw ~~Asas~~ Counsel in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, -limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to ~~sanctions~~sanctions, pursuant to ~~Federal Rule of Civil Procedure~~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) ~~(b)~~ — Withdrawal With and Without the Client's Consent.**

- (1) With Client's Consent. ~~Where~~When the withdrawing attorney has obtained the written consent of the client, ~~sueh~~the consent must be submitted with the motion.
- (2) Without Client's Consent. ~~Where~~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 status of the case including the dates and times of any scheduled court

proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate, (iii) certification by the moving attorney that the client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw.

~~(e)~~ ~~(e)~~ **Procedure After Withdrawal.**

- (1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until twenty-one (21) days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the twenty-one (21) day stay period.
- (2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule.
- (3) Within twenty-one (21) days after entry of the order, or within the time otherwise required by the court,
  - (A) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf.
  - (B) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.
- (4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended scheduling order.
- (5) An unrepresented party who fails to appear within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

~~(d)~~ **Substitution.**

~~Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a Notice of Substitution of Counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers;~~

~~(iii) identify the parties represented; (iv) be served on all parties; and, (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.~~

**DUCrimR 5-2****PRETRIAL SERVICES REPORT**

Whenever the United States requests the detention of a defendant, or where there is a likelihood that a defendant may be detained, the magistrate judge will request a ~~pretrial services report~~ Pretrial Services Report on the defendant pursuant to 18 U.S.C. § 3154. As permitted in Guide Vol. 8A, Chapter 1, §170(e), the court directs that a Pretrial Services Report will address rebuttable presumptions and potential penalties.

**(a)** Distribution and Retention of Pretrial Services Reports.

A written pretrial services report will, whenever possible, be presented to the magistrate judge and made available to the defendant, defense counsel, and the government at the defendant's first court appearance. Pretrial services reports are confidential, subject to the limitations and exceptions of 18 U.S.C. § 3153(c), and must be returned to the pretrial services officer at the close of any hearing. Defense counsel and the attorney for the government may, however, retain the criminal history attachment of the pretrial services report, and permit staff and the defendant to review it for purposes of guidelines calculations, but must not disclose it to any other person without an order of the court.



## **LPR 2.5      DOCUMENT PRODUCTION ACCOMPANYING INITIAL INVALIDITY CONTENTIONS**

With the Initial Non-Infringement, Unenforceability, and Invalidity Contentions under LPR 2.34, the party opposing a claim of patent infringement or asserting invalidity or unenforceability shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

- (a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 2.43(c) chart; and
- (b) a copy of any additional items of prior art identified pursuant to LPR 2.3,4(b)(1), including for foreign art any translation in the party's possession, custody, or control that does not appear in the file history of the asserted patent(s).