UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH

RULES OF CIVIL PRACTICE

DECEMBER 2019

TABLE OF CIVIL RULES

DUCivR 1-1 AVAILABILITY AND AMENDMENTS

(a) Availability.

Copies of these rules in paper and electronic formats, as amended, are available from the clerk's office for a reasonable charge set by the clerk. These rules also are posted on the court's website at http://www.utd.uscourts.gov. On admission to the bar of this court, each attorney will be provided a copy of these rules. Attorneys admitted Pro Hac Vice will be provided a copy on request and on payment to the clerk of the fee.

(b) Amendments to the Rules.

When amendments to these rules are proposed, notice and opportunity for public comment will be provided as directed by the court. When amendments to these rules are approved by the court, notice will be provided.

DUCivR 1-2 SANCTIONS FOR CIVIL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these civil rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party. Barring extraordinary circumstances, cases will not be dismissed for violation of the local rules.

See DUCivR 41-1 for sanctions for failure to notify the court when settlement is reached before a scheduled jury trial.

DUCivR 3-1 CLERK'S SCHEDULE OF MISCELLANEOUS FEES

Under authority of 28 U.S.C. § 1914(a) and (b), the clerk of court will collect from the parties filing and other fees as prescribed by the Judicial Conference of the United States. A current schedule of those fees is posted in the public reception area of the clerk's office, and copies of the fee schedule are available from the clerk on request. Pursuant to 28 U.S.C. § 1914(c), the court authorizes the clerk of court to require advance payment of those fees.

DUCivR 3-2 ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES

(a) Non-incarcerated Parties.

(1) Completion of Form AO 240. A non-incarcerated party wishing to proceed without having to pay the required fees under 28 U.S.C. § 1915 must complete and sign, under penalty of perjury, an Application to Proceed Without Prepayment of Fees and Affidavit (Application). The Application, Form AO240, will be supplied without charge by the clerk of court upon request or on the court's website http://www.utd.uscourts.gov.

(2) Conditions for Filing. The clerk of court will not accept any action for filing with the court that is not accompanied by the payment of fees and security or accompanied by an Application which has been granted by the court. Where an action and an Application are submitted jointly to the clerk, the clerk will lodge the action until the court has reviewed the Application. If the Application is approved, the clerk will file the action as of the date of the order. If the Application is denied, the clerk will notify the party that the action will not be filed until full payment is made.

(b) Incarcerated Parties.

(1) Completion of Form AO 240. Any incarcerated person seeking to file a civil action and to proceed without prepayment of fees must submit an Application to Proceed Without Prepayment of Fees and Affidavit, copies of which are available from the clerk of court, accompanied by a certified statement of the applicant's prison trust account showing current account status and any account activity for the six-month period preceding the date of the Application. If the Application is granted, the court will order, under the Prison Litigation Reform Act of 1995, an initial partial filing fee of twenty (20) percent of the greater of (i) the average monthly deposits to the account during the six-month period preceding the filing of the action, or (ii) the average monthly balance in the account for the six-month period preceding the filing of the action. In each following month, prison officials will calculate twenty (20) percent of the preceding month's income credited to the prisoner's account and, each time the amount in the account exceeds ten (10) dollars, forward a check for that amount to the clerk of court.

The inmate shall submit a written consent to the collection of fees by the prison officials to the court within the time specified by the order approving the Application.

(2) Conditions for Filing. The clerk will lodge complaints and petitions from incarcerated parties accompanied by an Application until certification of account balances, if not attached to the Application, and other required documents are received. Once all required documents are received, the clerk will forward the Application to a magistrate judge for review. If the Application is approved and the fee payment schedule is established, the clerk will file the action as of the day of the order. If the Application is denied, the clerk will inform the prisoner of the decision of the court.

(c) Dismissal of Claims as Frivolous Under 28 U.S.C §1915.

On receipt of an Application by a non-incarcerated or incarcerated party, a magistrate judge may review the complaint and recommend that (i) the Application be granted to permit the filing of the action, or (ii) that the action be dismissed pursuant to 28 U.S.C. § 1915(e)(2). If the court accepts the recommendation, the matter will be filed or subsequently closed.

DUCivR 3-3 COMMENCEMENT OF AN ACTION: NOTIFICATION OF MULTI-DISTRICT LITIGATION

An attorney filing a complaint, answer, or other pleading in a case that may be subject to pretrial proceedings before the Judicial Panel on Multidistrict Litigation, under the provisions of 28 U.S.C. § 1407, must submit in writing at the time of filing, or when the filing attorney becomes aware that the matter may be so subject, a description of the nature of the case and the titles and case numbers of all other related cases filed in this or any other jurisdiction.

DUCivR 3-4 CIVIL COVER SHEET

Every complaint or other document initiating a civil action must be accompanied by a Civil Cover Sheet, Form JS-44, available from the clerk. This requirement is solely for administrative purposes.

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

DUCivR 3-5 CONTENT OF THE COMPLAINT

The complaint is the initial pleading that commences a civil action. It should state the basis for the court's jurisdiction, the basis for the plaintiff's claim or cause for action, and the demand for relief. The complaint should not include any motion. Any motion intended to accompany a complaint, such as a motion for a temporary restraining order, must be prepared and filed as a separate document.

DUCivR 5-1 FILING OF PAPERS

(a) Electronic Filing.

Generally, registered 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 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 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. 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 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. When filing a document pursuant to subparagraphs (i) and (ii), the clerk will require the original of all pleadings, motions, proposed orders, and other 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) 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 postmark is the effective date of filing or service. If the postmark is illegible or missing, the filing or service date is presumed to be three (3) days before receipt.

DUCivR 5-2 FILING CASES UNDER COURT SEAL

(a) General Rule.

Court records are presumptively open to the public. Unless restricted by statute or court order, the sealing of civil cases is highly discouraged. In extraordinary circumstances, a judge may order a case to be sealed by granting a party's motion or sua sponte.

(b) Civil Actions for False Claims.

The clerk will seal actions filed under 31 U.S.C. § 3729 for a minimum of sixty (60) days, as required by 31 U.S.C. §3730(b)(2). The government may 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 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 case.

(3) Filing Documents After a Case Has Been Sealed.

A party must file, in the Salt Lake City clerk's office, an electronic PDF-formatted copy of the document(s) on a clearly labeled digital storage medium, consistent with those approved in the court's ECF Procedures Manual. Parties are not required to file paper copies of the documents.

(d) Access to Sealed Cases.

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

DUCivR 5-3 FILING DOCUMENTS UNDER COURT SEAL

(a) General Rule.

(1) The records of the court are presumptively open to the public. The sealing of pleadings, motions, memoranda, exhibits, and other documents or portions thereof (hereinafter, "Documents") is highly discouraged. Unless restricted by statute or court order, the public shall have access to all Documents filed with the court and to all court proceedings. On motion of a party and a showing of good cause, a judge may order that a Document be sealed. A stipulation or a blanket protective order that allows a party to designate documents as sealable will not suffice to allow the filing of Documents under seal.

See the court's CM/ECF and E-Filing Administrative Procedures Manual *for procedures in conventionally filing sealed documents.*

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

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

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

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

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

(b) Procedure for Filing Under Seal.

(1) Unless otherwise ordered by the court, a party must first publicly file a redacted version of the Document. A Motion for Leave to File Under Seal must be filed

contemporaneously with the proposed sealed Document. The motion and proposed sealed Document must be filed as separate docket entries and both linked to the redacted version of the Document. The motion, which may be filed under seal if necessary, and the proposed sealed Document must be electronically filed. The portion(s) of the Document sought to be filed under seal shall be highlighted to identify the specific information that is sought to be sealed.

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

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

(B) state the duration of the seal; and

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

(i) If the sole basis for proposing that the Document be sealed is that another party designated it as confidential or for attorneys eyes only, then so state that reason in the motion. If the designating party seeks to have the Document remain under seal, the designating party must file a Motion for Leave to File Under Seal in accordance with DUCivR 5-3(b)(2) within seven (7) days of service of the motion. If the designating party does not file a motion within seven (7) days, the original motion may be denied, and the Document may be unsealed without further notice.

(3) The court may make an independent determination as to whether the Document will be sealed, regardless of the parties' agreement or a party's decision not to oppose a Motion for Leave to File Under Seal.

(4) Subsequent Documents containing information that has already been the subject of an order allowing a sealed filing must state on the caption page, directly under the case number: "FILED UNDER SEAL PURSUANT TO COURT ORDER (DOCKET NO. ____)."

(5) A Document filed under seal pursuant to section (b)(1) above will remain sealed until the court either denies the Motion for Leave to File Under Seal or enters an order unsealing it.

(6) The court may direct the unsealing of a Document, with or without redactions, after notice to all parties and an opportunity to be heard, with the exception set forth above in (b)(2)(C)(i).

(7) The requirements of Rule 5-3(b) may be modified by the court upon a showing of good cause.

(c) Access to Sealed Documents.

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

DUCivR 5-4 HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS

(a) Form.

Petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255, and pro se civil rights complaints under 42 U.S.C. § 1983 et seq., must (i) be in writing, signed, and verified, and (ii) comply with 28 U.S.C. §§ 2254 and 2255. Forms for such actions are available from the clerk of court.

(b) Supporting Affidavit.

A petition, motion, or complaint submitted for filing with an Application to Proceed Without Prepayment of Fees and Affidavit must be accompanied by a supporting affidavit in compliance with DUCivR 3-2. In actions by persons who are incarcerated, this affidavit must be accompanied by (i) a certification, executed by prison officials, as to the availability of funds in any account maintained by the institution for the petitioner or movant, and (ii) documentation of any account activity in the six (6) months preceding the filing date.

(c) Filing Requirements.

Petitioners or movants seeking post-conviction relief must file with the clerk of court the original and one copy of the petition, motion, or complaint. If proceeding without prepayment of fees, petitioners and movants, in addition to the original and any required

copies, as prescribed in DUCivR 5-1(c), must provide the clerk with one copy for each person named as a defendant in the petition, motion, or complaint.

(d) Answers and Responses.

Unless otherwise ordered by the court, petitions for writs of habeas corpus under 28 U.S.C. §§ 2254 and 2255 do not require an answer or other responsive pleading.

DUCivR 5.1-1 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 send a certificate 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 file a copy of the certificate in the case 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 send a certificate to the 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 file a copy of the certificate in the case docket.

DUCivR 5.2 - 1 REDACTING PERSONAL IDENTIFIERS

(a) Redacting Personal Identifiers in Pleadings.

The filer shall redact personal information in filings with the court, as required by Fed. R. Civ. P. 5.2. The court may order redaction of additional personal identifiers by motion and order in a specific case or as to a specific document or documents. Any protective order under Fed. R. Civ. P. 26 (c) may include redaction requirements for public filings.

(b) Redacting Personal Identifiers in Transcripts.

Attorneys are responsible to review transcripts for personal information which is required to be redacted under Fed. R. Civ. P 5.2 and provide notice to the court reporter of the redactions which must be made before the transcript becomes available through PACER. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

(1) opening and closing statements made on the party's behalf;

(2) statements of the party;

(3) the testimony of any witnesses called by the party; and

(4) any other portion of the transcript as ordered by the court.

Redaction responsibilities apply to the attorneys even if the requestor of the transcript is the court or a member of the public including the media.

(c) Procedure for Reviewing and Redacting Transcripts.

Upon notice of the filing of a transcript with the court, the attorneys shall within seven (7) business days review the transcript and file, if necessary, a Notice of Intent to Request Redaction of the Transcript. Within twenty-one (21) calendar days of the filing of the transcript, the attorneys shall file a notice of redactions to be made. The redactions shall be made by the court reporter within thirty-one (31) calendar days of the filing of the transcript and a redacted copy of the transcript shall promptly be filed with the clerk. Transcripts which do not require redactions and redacted transcripts shall be electronically available on PACER ninety days (90) after filing of the original transcript by the court reporter.

DUCivR 6-1 FILING DEADLINES WHEN COURT IS CLOSED

When the court is closed by administrative order of the chief judge, any deadlines which occur on that day are extended to the next day that the court is open for business.

See DUCivR 77-2 for the clerk's authority to extend time.

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) Motions.

All motions must be filed with the clerk of court or presented to the court during proceedings. Refer to the court's CM/ECF and E-filing Administrative Procedures Manual for courtesy copy requirements.

(1) No Separate Supporting Memorandum for Written Motion.

The motion and any supporting memorandum must be contained in one document, except as otherwise allowed by this rule. The document must include the following:

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

(B) one or more additional sections including a recitation of relevant facts, supporting authority, and argument.

Specific instructions regarding Motions for Summary Judgment are provided in DUCivR 56-1. Failure to comply with the requirements of this section may result in sanctions, including (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) any other sanction deemed appropriate by the court.

(2) Exceptions to Requirement That a Motion Contain Facts and Legal Authority. Although all motions must state grounds for the request and cite applicable rules, statutes, case law, or other authority justifying the relief sought, no recitation of facts and legal authorities beyond the initial statement of the precise relief sought and grounds for the motion shall be required for the following types of motions:

(A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;

(B) to continue either a pretrial hearing or motion hearing;

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

(D) to substitute parties;

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

(F) for settlement conferences; and

(G) for approval of stipulations between the parties.

For such motions, a proposed order shall be attached as an exhibit to the motion and also emailed in an editable format to the chambers of the assigned judge.

(3) Length of Motions.

(A) Motions Filed Pursuant to Rules 12(b), 12(c), and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c),

and 65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages. If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits.

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

(C) All Other Motions: All motions that are not listed above must not exceed 2,500 words, or in the alternative, ten (10) pages. If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation excludes the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits.

(4) Motions Seeking Relief Similar to Another Party's Motion.

Each party seeking relief from the court must file its own motion stating the relief sought and the basis for the requested relief. A party may incorporate by reference the arguments and reasons set forth in another party's motion or memorandum to the extent applicable to that party.[1]

[1] Advisory Committee Note: This subsection was promulgated to solve the following problem that has occasionally arisen: A and B are defendants in an action, represented by different counsel. During the course of litigation, A files a motion for summary judgment. Because the grounds for summary judgment in A's motion apply equally to B, B files a "Notice of Joinder" in A's motion. By filing such a notice, however, B is merely joining in a motion to grant summary judgment to A. B is not specifically requesting summary judgment for itself. Assuming the court grants A's motion for summary judgment, confusion has arisen as to whether the court also granted summary judgment for B. To avoid this situation, this rule now requires A and B to each file a separate motion for summary judgment. However, instead of filing duplicative arguments, B's motion for summary judgment may simply request summary judgment and incorporate by reference A's motion as the grounds for granting B's motion. A party may, but is not required to, include a hyperlink to the incorporated memoranda. Once both motions are filed,

(b) Response and Reply Memoranda.

(1) Motions Are Not to Be Made in Response or Reply Memoranda; Evidentiary Objections Permitted.

(A) No motion, including but not limited to cross-motions and motions pursuant to Fed. R. Civ. P. 56(d), may be included in a response or reply memorandum. Such motions must be made in a separate document. A cross-motion may incorporate the briefing contained in a memorandum in opposition.

(B) For motions for which evidence is offered in support, the response memorandum may include evidentiary objections. If evidence is offered in opposition to the motion, evidentiary objections may be included in the reply memorandum. While the court prefers objections to be included in the same document as the response or reply, in exceptional cases, a party may file evidentiary objections as a separate document. If such an objection is filed in a separate document, it must be filed at the same time as that party's response or reply memorandum. If new evidence is proffered in support of a reply memorandum, any evidentiary objection must be filed within seven (7) days after service of the reply. A party offering evidence to which there has been an objection may file a response to the objection at the same time any responsive memorandum, if allowed, is due, or no later than seven (7) days after the objection is filed, whichever is longer. Motions to strike evidence as inadmissible are no longer appropriate and should not be filed. The proper procedure is to make an objection. *See* Fed. R. Civ. P. 56(c)(2).

(2) Length of Response and Reply Memoranda.

(A) Memoranda Filed Regarding Motions Made Pursuant to Rules 12(b), 12(c), and 65 of the Federal Rules of Civil Procedure: Memoranda in opposition to motions made pursuant to Fed. R. Civ. P. 12(b), 12(c), and

---

the court will have to rule on each party's motion separately, which will eliminate the ambiguity that comes from merely filing a "Notice of Joinder" in another party's motion.

65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages. Reply memoranda must not exceed 2,500 words, or in the alternative, ten (10) pages, and must be limited to rebuttal of matters raised in the memorandum in opposition. If memoranda in opposition or reply exceed the page limit, then the party must certify compliance with the word-count limit. These limitations exclude the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits. No additional memoranda will be considered without leave of court.

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

(C) All Other Motions: Opposition and reply memoranda related to all motions that are not listed above must not exceed 2,500 words, or in the alternative, ten (10) pages. If opposition or reply memoranda exceed the page limit, then the party must certify compliance with the word-count limit. These limitations exclude the following items: face sheet, table of contents, concise introduction, table of exhibits, and exhibits. Reply memoranda must be limited to rebuttal of matters raised in the opposition memoranda. No additional memoranda will be considered without leave of court.

(3) Filing Times.

(A) Motions Filed Pursuant to Rules 12(b), 12(c), and 56 of the Federal Rules of Civil Procedure: A memorandum opposing motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56 must be filed within twenty-eight (28) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within fourteen (14) days after service of the opposing memorandum. The court may order shorter briefing periods and attorneys may also so stipulate.

(B) All Other Motions, Including Motions Filed Pursuant to Rule 65 of the Federal Rules of Civil Procedure: A memorandum opposing any motion that is not a motion filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56 must be filed within fourteen (14) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within fourteen (14) days after service of the memorandum opposing the motion. The court may order shorter briefing periods and attorneys may also so stipulate.

(4) Citations of Supplemental Authority.

When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a notice with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(c) Supporting Exhibits to Memoranda Other Than Memoranda Related to Summary Judgment Motions.

If any memorandum in support of or opposition to a motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties. For exhibits relating to summary judgment memoranda, see DUCivR 56-1(b)(5) and (c)(6).

(d) Failure to Respond.

Failure to respond timely to a motion, other than for summary judgment, may result in the court's granting the motion without further notice.

(e) Leave of Court and Format for Overlength Motions and Memoranda.

If a motion or memorandum is to exceed the page or word limitations set forth in this rule, leave of court must be obtained. A motion for leave to file an overlength motion or memorandum must include a statement of the reasons why additional pages or words are

needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page or word-count limitations. Absent such showing, such requests will not be approved. An overlength motion or memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Motions or memoranda exceeding page or word-count limitations, for which leave of court has been obtained, must contain a table of contents, with page references, listing the titles or headings of each section and subsection.

(f) Oral Arguments on Motions.

The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

See DUCivR 56-1 for specific provisions regarding summary judgment motions and related memoranda.

DUCivR 7-2 CITING UNPUBLISHED JUDICIAL DECISIONS

(a) Precedential Value.

The citation of unpublished decisions is permitted. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.

(b) Citation Form.

Citation to unpublished opinions must include an appropriate parenthetical notation stating that it is an unpublished decision. E.g., *United States v. Wilson*, No. 06-2047, 2006 WL 3072766 (10th Cir. Oct. 31, 2006) (unpublished); *United States v. Keeble*, No. 05-5190, 184 Fed. Appx. 756, 2006 U.S. App. LEXIS 14871 (10th Cir. June 15, 2006) (unpublished); *United States v. Gartrell*, No. 2:04CR97 DB, 2005 WL 2265362 (D. Utah Sept. 7, 2005) (unpublished). References to unpublished decisions should include an appropriate electronic citation where possible.

(c) Copies.

If an unpublished decision is not available in a publicly accessible electronic database, such as a commercial database maintained by a legal research service or a database maintained by a court, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Even if such decisions are available in a publicly accessible database, counsel should provide copies of the cited unpublished decision upon request.

DUCivR 7-3 REQUEST TO SUBMIT FOR DECISION

When the briefing on a motion has been completed or when the time for such briefing has expired, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date of the reply memorandum, if any, was served, and whether a hearing has been requested.

DUCivR 7-4 FILINGS IN ALL ACTIONS SEEKING JUDICIAL REVIEW OF A DECISION FROM AN ADMINISTRATIVE AGENCY

(a) Review of Administrative Agency Decisions.

(1) In all cases in which a plaintiff files a complaint or petition seeking judicial review of an administrative agency's decision under an "arbitrary and capricious" or "substantial evidence" standard of review, the following pleadings are not appropriate and must not be filed with the court:

(A) an answer to the complaint;

(B) a motion for judgment on the pleadings;

(C) a motion for summary judgment; or

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

(2) Within the time prescribed by statute, rule, or court order, an agency whose decision is the subject of the complaint must file one of the following responsive documents:

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

(B) a short and plain statement admitting or denying that the agency decision, or any part thereof, is arbitrary and capricious or is not supported by substantial evidence, along with a statement of any affirmative defenses. In cases challenging a decision of the Commissioner of the Social Security Administration, the agency shall file the administrative record along with its short and plain statement.

(3) The Federal Rules of Civil Procedure continue to apply in proceedings under this subsection unless judicial authority, or these local rules require otherwise.[2]

(4) If the court denies the motion to dismiss, the agency must file a short and plain statement either denying or admitting that the agency decision is arbitrary and capricious or is not supported by substantial evidence within the time prescribed in Fed. R. Civ. P. 12(a)(4)(A).

(5) Within fourteen (14) days of filing the agency's short and plain statement, and in lieu of an Attorney Planning meeting report under Fed. R. Civ. P. 26(f), the parties must submit a proposed scheduling order setting forth the dates by which:

(A) the agency, in a case other than one challenging a decision of the Social Security Administration, will file the indexed administrative record;

(B) objections to the administrative record and responses thereto will be filed and served upon opposing counsel;

(C) any other pre-merits motions will be due;

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

(E) the agency will file an "Answer Brief," which must be filed using the CM/ECF event "Memorandum in Opposition to Motion" and linked to the "Motion for Review of Agency Action"; and

[2] Advisory Committee Note: This provision is inserted to avoid ambiguity as to whether the Federal Rules of Civil Procedure will continue to govern other matters that arise in litigation challenging agency decisions, such as amendments to complaints, motions to intervene, motions for injunctive relief, and other matters not otherwise precluded by judicial authority, the rules themselves, or these rules.

(F) plaintiff may file a "Reply Brief," which shall be limited to addressing only those issues raised in the Answer Brief, and must be filed using the CM/ECF event "Reply Memorandum/Reply to Response to Motion" and linked to the "Motion for Review of Agency Action."[3]

The proposed scheduling order must briefly state the issues on which plaintiff claims error in the agency decision and the basis for which the agency claims that its decision was not arbitrary and capricious or was supported by substantial evidence. Once entered, the scheduling order governs the timing of the parties' respective briefs unless the court modifies its order. Unless the court orders otherwise, no briefs other than those mentioned above will be received.

(6) In cases other than a challenge to a decision of the Commissioner of the Social Security Administration, the Opening Brief must follow Fed. R. App. P. 28(a)(2), (3), (5), (6)-(10). The Answer Brief must follow Fed. R. App. P. 28(b), except that it need not follow the requirements of Fed. R. App. P. 28(a)(1) or (4). The Reply Brief must follow Fed. R. App. P. 28(c). The formatting requirements of DUCivR 10-1 apply to all briefs filed under this section. The length of the parties' briefs is governed by Fed. R. App. P. 32(a)(7). Motions for overlength briefs may be granted only upon a showing of good cause.

(7) In cases challenging the decision of the Commissioner of the Social Security Administration, Plaintiff's Opening Brief and Defendant's Answer Brief must not exceed 6,500 words, or in the alternative, twenty-five (25) pages. Plaintiff's Reply Brief must not exceed 2,500 words, or in the alternative, ten (10) pages. These limitations exclude the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits. If a brief is to exceed the page or word limitations set forth in this rule, leave of court must be obtained. Motions to file an overlength brief are discouraged and will be granted

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

only upon a showing of good cause and exceptional circumstances, as set forth in DUCivR 7-1(e).

DUCivR 7-5 HYPERLINKS IN COURT FILINGS

(a) Encouraged and Permissible Hyperlinks.

As a convenience for the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. For purposes of this rule, a hyperlink is a reference within an electronically filed document that permits a user to click on the reference so as to be directed to other content. Standard legal citations must still be used so that those who desire to retrieve referenced material may do so without use of an electronic service.

(1) Encouraged Hyperlinks.

(A) Hyperlinks to other portions of the same document and to material elsewhere in the record, such as exhibits or deposition testimony, are encouraged.

(B) A hyperlink to a government site or to legal authority from recognized electronic research services, such as Westlaw, Lexis/Nexis, Google Scholar, Casemaker, Fastcase or Findlaw is encouraged.

(2) Permissible Hyperlinks.

A hyperlink to any other internet resource not identified in subsection (a)(1)(B) is permissible in any document filed with the court, provided that the attorney or party adding the hyperlink downloads the content thus cited and attaches it to the document in PDF format, or if the referenced content is a media object in a format not acceptable for CM/ECF filing, submits the content with Notice of Conventional Filing pursuant to Section II(E)(6) of the District of Utah CM/ECF Administrative Procedures Manual.

DUCivR 9-1 ALLOCATION OF FAULT

(a) Allocating Party Filing Requirements.

Any party that seeks to allocate fault to a nonparty pursuant to Utah Code Annotated § 78B-5-818, shall file:

(1) A description of the factual and legal basis on which fault can be allocated; and

(2) Information known or reasonably available to the party that identifies the non-party, including name, city and state of residence, and employment. If the identity of the nonparty is unknown, the party shall so state in its filing.

(b) Allocating Party Time Requirements.

The information specified in subsection (a) must be included in the party's responsive pleading if known to the party. Alternatively, it must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated, but not later than any deadline specified in the scheduling order. Upon motion and good cause shown, the court may permit the party to file the information specified in subsection (a) after the expiration of any deadlines provided for in this rule, but in no event later than ninety (90) days before the scheduled trial date.

See DUCivR 7-1 for court policy and procedural requirements regarding motions and memoranda.

DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) Form of Pleadings and Other Papers.

(1) Except as otherwise permitted by the court, all pleadings, motions, and other papers, whether presented for filing in person, by mail, or via CM/ECF, must have a top margin of not less than 1½ inches and all other margins must be at least 1 inch. The paper size must be 8 ½ inches by 11 inches.

(2) For filings submitted by mail or in person, originals must be on white, high quality paper, with printing on only one side. Filed originals must also be flat and unfolded.

(3) Filings submitted via CM/ECF must also comply with latest version of the District of Utah CM/ECF and E-filing Administrative Procedures Manual.

Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for

filing with the court. Text must be typewritten or plainly printed and double-spaced except for quoted material and footnotes. Exhibits attached to the original of any pleading, motion, or paper shall not be separately tabbed with dividers, but an 8 ½ x 11-inch sheet shall be inserted to separate and identify each exhibit. Judges' copies of pleadings and exhibits may include tabbed dividers for the convenience of chambers. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting, email address, and Utah State Bar Number[4]
Attorney For
Address
Telephone

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Name of Case	**Case No. w/ District Judge Initials and Magistrate Judge Initials, if applicable** **TITLE OF DOCUMENT** **District or Magistrate Judge's Name (When Applicable)**

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents. All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

[4] Pursuant to DUCivR 83-1.3, any changes to this name and contact information must be transmitted immediately to the office of the clerk. Attorneys admitted to practice Pro Hac Vice are not required to include a bar number.

Northern Division Civil Cases 1:11CV100 RJS

Central Division Civil Cases 2:11CV100 RJS

Southern Region Civil Cases: 4:11CV100 DN

Northern Division Criminal Cases 1:11CR100 RJS

Central Division Criminal Cases 2:11CR100 RJS

Southern Region Criminal Cases: 4:11CR100 DN

Legend:

1 = Northern Division (Ogden Office)
2 = Central Division (Salt Lake Office)
4 = Southern Region (St. George Office)
11 = Calendar Year
CV = Civil Case
CR = Criminal Case
AD = Attorney Discipline Case
MC = Miscellaneous Case
MJ = Magistrate Judge Case
RF = Restricted Filer Case
100 = Consecutive Case Number
RJS = Assigned Judge Initials

The title of each document must indicate its nature and on whose behalf it is filed. Where a jury trial is demanded as permitted by the Federal Rules of Civil Procedure, the words "JURY DEMANDED" must be placed in capital letters on the first page immediately below the title of the pleading. Where a matter has been referred to a magistrate judge, the caption for all motions, pleadings, and related documents in the matter must include the name of the magistrate judge below the title of the document.

(b) Font Requirements.

The required font type is Times New Roman or Arial. Font size must be a minimum of 12 point, including footnotes, although use of 14 point is encouraged. All page limits as set forth in these rules apply, even if a party elects to use a font size larger than 12.

(c) Examination by the Clerk.

The clerk will examine all pleadings and other papers filed and may require counsel to properly revise or provide required copies of pleadings or other papers not conforming to the requirements set forth in these rules.

FED. R. CIV. P. 12

DEFENSES AND OBJECTIONS-WHEN AND HOW PRESENTED-BY PLEADING OR MOTION-MOTION FOR JUDGMENT ON THE PLEADINGS

No corresponding local rule; however, see DUCivR 7-1 for guidelines on motions and memoranda; DUCivR 7-2 for guidelines on citing unpublished opinions; and DUCivR 56-1 for guidelines on summary judgment motions and memoranda in support of or in opposition to such motions.

DUCivR 15-1 AMENDED PLEADINGS

(a) A party moving under Fed. R. Civ. P. 15(a)(2) for leave to amend a pleading must attach the following as exhibits to the motion:

(1) the proposed amended 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 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 pleading with the court. The amended pleading filed must be the same pleading proffered to the court in subsection (a)(1), unless the court has ordered otherwise.

DUCivR 16-1 PRETRIAL PROCEDURE

(a) <u>Pretrial Scheduling and Discovery Conferences</u>.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order. When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR

program, and (iv) the discovery cutoff date. If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

(A) Unless otherwise ordered by the court, the following categories of cases are exempt from these scheduling conference and scheduling order requirements:

(i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;

(ii) Cases filed by parties appearing pro se or in which all defendants are pro se;

(iii) Bankruptcy appeals and withdrawals;

(iv) Forfeiture and statutory penalty actions;

(v) Internal Revenue Service third-party and collection actions;

(vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;

(vii) Actions to enforce or quash administrative subpoenas;

(viii) Cases subject to multidistrict litigation;

(ix) Actions to compel arbitration or set aside arbitration awards;

(x) Proceedings to compel testimony or production of documents in actions pending in another district or to perpetuate testimony for use in any court; and

(xi) Cases assigned to be heard by a three-judge panel.

(B) Unless otherwise ordered by the court, as a matter of general court policy, incarcerated or otherwise detained pro se parties will not be required to comply with Fed. R. Civ. P. 26(f).

(b) Magistrate Judge.

The court may designate a magistrate judge to hold the initial scheduling or any pretrial conference. The court generally will conduct the final pretrial conference in all contested civil cases.

(c) Attorneys' Conference.

At a time to be fixed during the scheduling conference, but at least ten (10) days prior to the final pretrial conference, counsel for the parties will hold an attorneys' conference to discuss settlement, a proposed pretrial order, exhibit list and other matters that will aid in an expeditious and productive final pretrial conference.

(d) Final Pretrial Conference.

Trial counsel must attend the final pretrial conference with the court. Preparation for this final pretrial conference should proceed pursuant to Fed. R. Civ. P. 16 and should include (i) preparation by plaintiff's counsel of a recommended pretrial order that is submitted to other counsel at least five (5) days prior to the final pretrial date, and (ii) preparation for resolution of unresolved issues in the case.

(e) Pretrial Order.

At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is on the court's website http://www.utd.uscourts.gov. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

(a) Authority.

Under 28 U.S.C. §§ 471-482 and §§ 651-658 and the court's Civil Justice Expense and Delay Reduction Plan of 1991, the court has established a court-annexed alternative dispute resolution (ADR) program for the District of Utah.

(b) Procedures Available.

The procedures available under the court's ADR program include arbitration and mediation. In addition, notwithstanding any provision of this rule, all civil actions may be the subject of a settlement conference as provided in DUCivR 16-3.

(c) Cases Excluded from ADR Program.

(1) Prisoner is a Party. Unless otherwise ordered by the assigned judge, cases in which a prisoner is a party will not be subject to this rule.

(2) Excluded from Referral to Arbitration. Pursuant to the 1998 Alternative Dispute Resolution Act, the following types of cases may be referred to mediation but are excluded from referral to arbitration in the court's ADR program.

(A) The action originates as a bankruptcy adversary proceeding, as an appeal from the bankruptcy court, or as a review of judgment of administrative law forums or other official adjudicated proceeding;

(B) The action is based on an alleged violation of a right secured by the Constitution of the United States; or

(C) Jurisdiction is based in whole or in part on 28 USCA §1343.

(d) Certificate of ADR Election.

Except as excluded by section (c) of this rule, all counsel in civil actions should discuss the court's ADR program with their clients. The clerk will automatically issue to counsel a Notice of ADR which advises that any party at any time may contact the ADR program administrator in the office of the clerk to discuss or to request that the matter be referred to the ADR program. If one or more of the parties elects referral to the ADR program, the court or magistrate judge conducting the initial scheduling conference will consult with the parties whether to order referral of the matter to the program.

(e) Case Referral Procedure.

Referral into the court's ADR program will be made by order of the district, bankruptcy, or magistrate judge. Referrals to mediation may be made after consultation with the parties at the initial scheduling conference either on motion of one or more parties or on the court's motion. Referrals to arbitration may be made after consultation with the parties at the initial scheduling conference or on motion of one or more parties and the

consent of all parties. The order will designate whether the case is referred to mediation or arbitration.

(f) Stay of Discovery.

Unless otherwise stipulated by all parties, formal discovery pursuant to Fed. R. Civ. P. 26 through 37 will be stayed with respect to all parties upon entry of an order referring a civil action to the court's ADR program. Unless otherwise ordered by the assigned judge, no scheduled pretrial hearings or deadlines will be affected by referral into the ADR program.

(g) ADR Case Administration.

The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan.

(h) Supervisory Power of the Court.

Notwithstanding any provision of this rule or the court's ADR Plan, every civil action filed with the court will be assigned to a judge as provided in DUCivR 83-2 of these rules. The assigned judge retains full authority to supervise such actions, consistent with Title 28, U.S.C., the Federal Rules of Civil Procedure, and these rules.

(i) Compliance Judge.

The court will designate a district or magistrate judge to serve as the ADR compliance judge (ADR judge) to hear and determine complaints alleging violations of provisions of this rule or the ADR Plan. When necessary, the chief judge may designate an alternative district or magistrate judge to temporarily perform the duties of the ADR judge.

(j) Violations of the Rules Governing the ADR Program.

(1) Complaints. A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s) has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing or under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.

(2) Confidentiality. Absent a waiver of confidentiality by all necessary persons, or an order of the court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.

DUCivR 16-3 SETTLEMENT CONFERENCES

(a) Authority for Settlement Conferences.

The assigned judge may require, or any party may at any time request, the scheduling of a settlement conference.

(b) Referral of Cases for Purposes of Conducting a Settlement Conference.

Under Fed. R. Civ. P. 16(a)(5) and (c)(9) and 28 U.S.C. § 636(b)(1), the district judge to whom the case has been assigned for trial may refer it, for the purpose of undertaking a settlement conference, either to another district judge or to a magistrate judge.

(c) Settlement Proceedings.

The settlement judge or magistrate judge may require the presence of the parties and their counsel, may meet privately from time to time with one party or counsel, and may continue the settlement conference from day to day as deemed necessary. The settlement judge may discuss any aspect of the case and make suggestions or recommendations for settlement. Counsel for each party to the settlement conference must ensure that a person or representative with settlement authority or otherwise authorized to make decisions regarding settlement is available in-person for the full duration of the settlement conference. If the person present does not have full settlement authority, a person with full settlement authority must be directly available by telephone during the settlement conference.

(d) Confidential Nature of Settlement Proceedings.

The settlement conference will be conducted in such a way as to permit an informal, confidential discussion among counsel, the parties, and the settlement judge. The settlement judge may require settlement memoranda to be submitted either with or without service upon the other parties and counsel participating in the settlement conference, but such memoranda must neither be made a part of the record nor filed with the clerk of court. The settlement judge may not communicate to the trial judge to whom

the case has been assigned the confidences of the conference, except to report whether or not the case has been settled. Such report must be made in writing, with copies to the parties and their counsel, within a reasonable time following the conference or within such time as the trial judge may direct. If the case does not settle, no oral or written communication made during the settlement conference may be used in the trial of the case or for any other purpose.

FED. R. CIV. P. 22
INTERPLEADER

No corresponding local rule; however, see DUCivR 67-1 for provisions on deposit of funds into the court registry.

DUCivR 23-1 DESIGNATION OF PROPOSED CLASS ACTION

(a) Caption.

In any case sought to be maintained as a class action, the complaint or other pleading asserting a class action must include within the caption the words, "Proposed Class Action."

(b) Class Allegation Section.

Any pleading purporting to commence a class action shall contain a separate section entitled “Class Action Allegations” setting forth the information required below in subsection (c).

(c) Class Action Requisites.

The class action allegation section shall address the following:

(1) The definition of the proposed class;

(2) The size of the proposed class;

(3) The adequacy of representation by the class representative;

(4) The common questions of law and fact;

(5) The typicality of claims or defenses of the class representative;

(6) The nature of the notice to the proposed class; and

(7) If proceeding under Fed. R. Civ. P. 23(b)(3), the additional matter pertinent to the findings as provided by that subdivision.

(d) Motion for Certification.

Unless the court otherwise orders, the proponent of a class shall file a motion for certification that the action is maintainable as a class action within ninety (90) days after service of a pleading purporting to commence a class action, including cross claims and counterclaims. In cases removed or transferred to this court, the motion shall be filed within ninety (90) days of the removal or transfer.

DUCivR 26-1 DISCOVERY REQUESTS AND DOCUMENTS

(a) Form of Responses to Discovery Requests.

Parties responding to interrogatories under Fed. R. Civ. P. 33, requests for production of documents or things under Fed. R. Civ. P. 34, or requests for admission under Fed. R. Civ. P. 36 must repeat in full each such interrogatory or request to which response is made. The parties also must number sequentially each interrogatory or request to which response is made.

(b) Filing and Custody of Discovery Materials.

(1) Filing. Unless otherwise ordered by the court, counsel must not file with the court the following:

(A) all disclosures made under Fed. R. Civ. P. 26 (a)(1) and (a)(2);

(i) in lieu of filing expert disclosures and reports under Fed. R. Civ. P. 26(a)(2), the parties shall file with the court a list of the experts disclosed to the opposing party along with each expert's subject of expertise;

(B) depositions or notices of taking deposition required by Fed R. Civ. P. 30(b)(1);

(C) interrogatories;

(D) requests for production, inspection or admission;

(E) answers and responses to such requests; and

(F) certificates of service for any of the discovery materials referenced in (A) through (E).

This section does not preclude the use of discovery materials at a hearing, trial, or as exhibits to motions or memoranda.

(2) Custody. The party serving the discovery material or taking the deposition must retain the original and be the custodian of it.

DUCivR 26-2 STANDARD PROTECTIVE ORDER AND STAYS OF DEPOSITIONS

(a) Standard Protective Order.

The court has increasingly observed that discovery in civil litigation is being unnecessarily delayed by the parties arguing and/or litigating over the form of a protective order. In order to prevent such delay and "to secure the just, speedy, and inexpensive determination of every action," the court finds that good cause exists to provide a rule to address this issue and hereby adopted this rule entering a Standard Protective Order.

(1) This rule shall apply in every case involving the disclosure of any information designated as confidential. Except as otherwise ordered, it shall not be a legitimate ground for objecting to or refusing to produce information or documents in response to an opposing party's discovery request (e.g., interrogatory, document request, request for admissions, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26 (a)(1) that the discovery request or disclosure requirement is premature because a protective order has not been entered by the court. Unless the court enters a different protective order, pursuant to motion or stipulated motion, the Standard Protective Order available on the Forms page of the court's website http://www.utd.uscourts.gov shall govern and discovery under the Standard Protective Order shall proceed. The Standard Protective Order is effective by virtue of this rule and need not be entered in the docket of the specific case.

(2) Any party or person who believes that substantive rights are being impacted by application of the rule may immediately seek relief.

(b) Motion for Protective Order and Stay of Deposition.

A party or a witness may stay a properly noticed oral deposition by filing a motion for a protective order or other relief by the third business day after service of the notice of deposition. The deposition will be stayed until the motion is determined. Motions filed after the third business day will not result in an automatic stay.

DUCivR 29-1 AGREEMENTS REGARDING EXTENSION OF DISCOVERY RESPONSE DEADLINES

An agreement between the parties extending the time to respond to any form of discovery request does not require court approval, and no motion, proposed order, or other document need be filed with the Court memorializing the agreement, if:

(1) The time originally prescribed to respond has not expired, and

(2) The extension does not modify or interfere with:

- A deadline established by the case scheduling order;
- A filing deadline established by the Court, the Federal Rules of Civil Procedure, or these Local Rules, including a deadline established by the Short Form Discovery Rule;
- A Court-scheduled conference;
- A deadline for filing a proposed pretrial order;
- A trial date; or
- Any other deadline referenced in Federal Rule of Civil Procedure 29(b).

DUCivR 30-1 DEPOSITION OBJECTIONS

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

- Ambiguous
- Vague or unintelligible
- Argumentative
- Compound

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

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

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

(a) Discovery Disputes.

(1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:

(A) identifying the discovery disclosure/request(s) at issue, the response(s) thereto, and specifying why those responses/objections are inadequate, and;

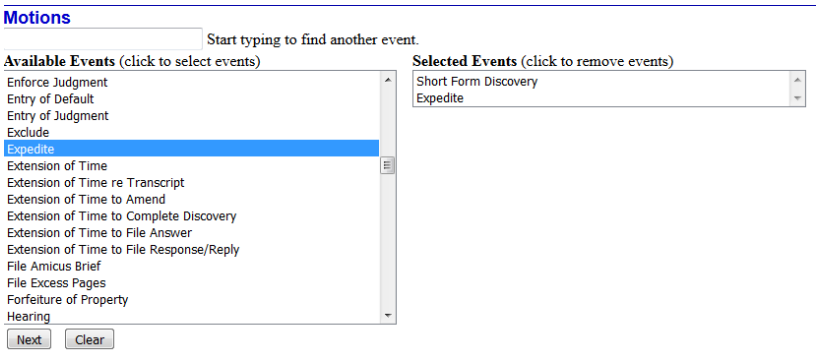
(B) requesting to meet and confer, either in person or by telephone, with alternative dates and times to do so.

(2) If the parties cannot resolve the dispute, and they wish to have the Court mediate the dispute in accordance with Fed. R. Civ. P. 16(b)(3)(v), the parties (either individually or jointly) may contact chambers and request a discovery dispute conference.

(3) If the parties wish for the court to resolve the matter by order, the parties (either individually or jointly) must file a Short Form Discovery Motion, which should not exceed 500 words exclusive of caption and signature block.

(4) The Short Form Discovery Motion must include a certification that the parties made reasonable efforts to reach agreement on the disputed matters and recite the date, time, and place of such consultation and the names of all participating parties or attorneys. The filing party should include a copy of the offending discovery request/response (if it exists) as an exhibit to the Short Form Motion. Each party should also email chambers a proposed order setting forth the relief requested in a word processing format.

(5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)



(6) The opposing party must file its response five business days[5] after the filing of the Motion, unless otherwise ordered. Any opposition should not exceed 500 words exclusive of caption and signature block.

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

(A) decide the issue on the basis of the Short Form Discovery Motion after hearing from the parties to the dispute, either in writing or at a hearing, consistent with DUCivR 7-1(f);

(B) set a hearing, telephonic or otherwise, upon receipt of the Motion without waiting for any Opposition; and/or

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

(8) If any party to the dispute believes it needs extended briefing, it should request such briefing in the short form motion or at a hearing, if one takes place. This request should accompany, and not replace, the substantive argument.

(9) A party subpoenaing a non-party must include a copy of this rule with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow this procedure.

(10) If disputes arise during a deposition that any party or witness believes can most efficiently be resolved by contacting the Court by phone, including disputes that give rise to a motion being made under Rule 30(d)(3), the parties to the deposition shall call the assigned judge and not wait to file a Short Form Discovery Motion.

(11) Any objection to a magistrate judge's order must be made according to Federal Rule of Civil Procedure 72(a), but must be made within fourteen (14) days of the

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

magistrate judge's oral or written ruling, whichever comes first, and must request expedited treatment. DUCivR 72-3 continues to govern the handling of objections.

FED. R. CIV. P. 40
ASSIGNMENT OF CASES FOR TRIAL

No corresponding local rule; however, see DUCivR 83-6 for procedural requirements for enforceable stipulations regarding conduct of trials; also see DUCivR 83-2 for assignment of civil cases.

DUCivR 41-1 SANCTIONS: FAILURE TO NOTIFY WHEN SETTLEMENT IS REACHED BEFORE A SCHEDULED JURY TRIAL

In any case for which a trial date has been scheduled, the parties must immediately notify the court of any agreement reached by the parties which resolves the litigation as to any or all of the parties. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, jury costs paid or incurred may be assessed against the parties and their attorneys as directed by the court. Jury costs will include attendance fees, per diem, mileage, and parking. No jury costs will be assessed if notice of settlement or disposition of the case is given to the jury section of the clerk's office at least one (1) full business day prior to the scheduled trial date.

DUCivR 41-2 DISMISSAL FOR FAILURE TO PROSECUTE

The court may issue at any time an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper.

DUCivR 42-1 CONSOLIDATION OF CIVIL CASES

(a) Motion.

Any party may file a motion and proposed order to consolidate two or more cases before a single judge if the party believes that such cases or matters:

(1) arise from substantially the same transaction or event;

(2) involve substantially the same parties or property;

(3) involve the same patent, trademark, or copyright;

(4) call for determination of substantially the same questions of law; or

(5) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.

(b) Motion to Be Filed in Lower-Numbered Case.

Any motion pursuant to this rule must be filed in the lower-numbered case, and a notice of the motion must be filed in all other cases which are sought to be consolidated. The motion will be decided by the judge assigned the lower-numbered case. If the motion is granted, the case will be consolidated into the case with the lowest number.

(c) Sua Sponte Consolidation.

The court may sua sponte enter an order of consolidation. Any order entered sua sponte by the court will be effective fourteen (14) days after service, unless a party in interest files an objection thereto prior to expiration of such fourteen-day period. If a timely objection is filed, no consolidation will occur until the court has entered a ruling upon the objection.

See DUCivR 83-2(g) for rules about transferring related cases.

DUCivR 43-1 COURTROOM PRACTICES AND PROTOCOL

(a) Conduct of Counsel.

(1) Only one (1) attorney for each party may examine or cross-examine a witness, and not more than two (2) attorneys for each party may argue the merits of the action unless the court otherwise permits.

(2) To maintain decorum in the courtroom, counsel will abide strictly by the following rules:

(A) Counsel will stand, if able, when addressing the court and when examining and cross-examining witnesses.

(B) Counsel will not address questions or remarks to opposing counsel without first obtaining permission from the court. Appropriate quiet and informal consultations among counsel off the record are permitted as long as they neither delay nor disrupt the proceedings.

(C) The examination and cross-examination of witnesses will be limited to questions addressed to the witnesses. Counsel must refrain from making statements, comments, or remarks prior to asking a question or after a question has been answered.

(D) In making an objection, counsel must state plainly and briefly the specific ground of objection and may not engage in argument unless requested or permitted by the court to do so.

(E) Only one (1) attorney for each party may make objections concerning the testimony of a witness when being questioned by an opposing party. The objections must be made by the attorney who has conducted or is to conduct the examination or cross-examination of the witness.

(F) The examination and cross-examination of witnesses must be conducted from the counsel's table or the lectern, except when necessary to approach the witness or the courtroom clerk's desk for the purpose of presenting or examining exhibits.

(b) Exclusion of Witnesses.

On its own motion or at the request of a party, the court may order witnesses excluded from the courtroom so they cannot hear the testimony of other witnesses. This section of this rule does not authorize exclusion of the following: (i) a party who is a natural person; (ii) an officer or employee of a party that is not a natural person and who is designated as that party's representative by its attorney; or (iii) a person whose presence is shown by a party to be essential to the presentation of the case. Witnesses excluded pursuant to Fed. R. Evid. 615 need not be sworn in advance, but may be ordered not to discuss their testimony with anyone except counsel during the progress of the case. Unless otherwise directed by the court for special reasons, witnesses who have testified may remain in the

courtroom even though they may be recalled on rebuttal. Unless otherwise directed by the court upon motion of counsel, witnesses once examined and permitted to step down from the stand will be deemed excused. Counsel are encouraged to make requests for exclusion only when necessary to ensure due process.

(c) Arguments.

The court will determine the length of time and the sequence of final arguments.

(d) Presence of Parties and Attorneys upon Receiving Verdict or Supplemental Instructions.

All parties and attorneys are obligated to be present in court when the jury returns its verdict or requests further instructions. Parties and attorneys in the immediate vicinity of the court will be notified, but the return of the verdict or the giving of supplemental instructions will not be delayed because of their absence. If, when notification is attempted, the parties and attorneys are not immediately available in the vicinity of the court, they will be deemed to have waived their presence at the return of the verdict or the giving of supplemental instructions requested by the jury.

DUCivR 45-1 PRIOR NOTICE OF SUBPOENA AND COPY OF DUCivR 37-1 REQUIRED FOR NONPARTY

The notice of issuance of subpoena with a copy of the proposed subpoena that is (i) directed to a nonparty, and (ii) commands production of documents and things or inspection of premises before trial shall be served on each party as prescribed by Fed. R. Civ. P. 45(a)(4). The subpoena may not be served upon the nonparty until four (4) days after the service of the notice.[6] In addition, a party subpoenaing a nonparty must include a copy of DUCivR 37-1 with the subpoena. Any motion to quash, motion for a protective order, or motion to compel a subpoena will follow the procedure set forth in DUCivR 37-1.

[6] This provision is subject to the addition of three (3) days provided by Fed.R.Civ.P (6)(d).

DUCivR 47-1 IMPANELMENT AND SELECTION OF JURORS

(a) Requests for Voir Dire Examination.

Unless the court otherwise orders, any special request for voir dire examination of the jury panel regarding the prospective jurors' qualifications to sit must be submitted in writing to the court and served upon the opposing party or parties at least two (2) full business days prior to the time the case is set for trial, unless the court's examination furnishes grounds for additional inquiry.

(b) Voir Dire Examination and Exercise of Challenges.

The court will examine the jury panel on voir dire and will permit suggestions from counsel for further examination. If any prospective juror is excused for cause, another prospective juror's name will be drawn when required in order to allow for all challenges. When the panel is accepted for cause, the courtroom clerk will present a list of the jurors in the order of their places in the box to counsel, who alternately will exercise or waive such challenges by appropriate indications on the list. Absent a stipulation of the parties to the contrary, the first twelve (12) jurors named on the list who remain unchallenged will constitute the jury.

DUCivR 47-2 COMMUNICATION WITH JURORS

(a) Communications Before or During Trial.

Unless otherwise ordered by the court, no person associated with a case before the court may communicate with a juror or prospective juror in the case, or with the family or acquaintances of such juror, either before or during trial, except in open court and in the course of the court proceedings. No person, whether associated with the case or not, may discuss with or within the hearing of any juror or prospective juror, any matter touching upon the case or any matter or opinion concerning any witness, party, attorney, or judge in the case.

(b) Communications After Trial.

The court will instruct jurors that they are under no obligation to discuss their deliberations or verdict with anyone, although they are free to do so if they wish. The court may set special conditions or restrictions upon juror interviews or may forbid such

interviews. Unless otherwise ordered by the court, juror contact information will not be disclosed by the court or its employees.

DUCivR 48-1 NUMBER OF JURORS; IMPANELING AND SELECTION OF JURY

In all civil cases, absent a stipulation of the parties to the contrary, the trial jury will consist of twelve (12) members, and the verdict of the jury shall be unanimous. The court for good cause, however, may excuse jurors from service during trial or deliberation, in which event the verdict still must be unanimous. No verdict will be taken from a jury of fewer than six members.

DUCivR 51-1 INSTRUCTIONS TO THE JURY

In the absence of a specific Trial Order that provides instructions and deadlines regarding proposed jury instructions, all proposed jury instructions must be filed electronically in conformity with the CM/ECF Administrative Procedures and emailed to chambers in an editable format (e.g., WordPerfect or MS Word) a minimum of seven (7) days prior to the day the case is set for trial. The court, in its discretion, may receive additional written requests during the course of the trial.

Each proposed instruction must be numbered, indicate the identity of the party presenting the instruction, and contain citations to authority. Individual instructions must address only one (1) subject, and the principle of law embraced in any instruction may not be repeated in subsequent instructions.

FED. R. CIV. P. 52

FINDINGS BY THE COURT; JUDGMENT OF PARTIAL FINDINGS

No corresponding local rule; however, see DUCivR 54-1 for provisions regarding judgments, orders, and findings of fact and conclusions of law.

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

(a) Orders in Open Court.

Unless otherwise determined by the court, orders announced in open court in civil cases must be prepared in writing by the prevailing party, served within five (5) days of the court's action on opposing counsel, and submitted to the court for signature pursuant to the provisions of section (b) of this rule.

(b) Orders and Judgments.

Unless otherwise determined by the court, proposed orders and judgments prepared by an attorney must be served upon opposing counsel for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections are filed within seven (7) days after service.

(c) Proposed Findings of Fact and Conclusions of Law.

Except as otherwise directed by the court, in all non-jury cases to be tried, counsel for each party must prepare and file with the court, at least two (2) full business days before the day the trial is scheduled to begin, proposed findings of fact and conclusions of law consistent with the theory of the submitting party and the facts expected to be proved. Proposed findings should be concise and direct, should recite ultimate rather than mere evidentiary facts, and should be suitable in form and substance for adoption by the court should it approve the contentions of the particular party. Proposed findings also will serve as a convenient recitation of contentions of the respective parties, helpful to the court as it hears and considers the evidence and arguments and relates such evidence, or lack of it, to the salient contentions of the parties.

DUCivR 54-2 COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES

(a) Bill of Costs.

Within fourteen (14) days after the entry of final judgment, the party entitled to recover costs must file a bill of costs on a form available from the clerk of court, a memorandum of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the

statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their 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).

(b) Objections to Bill of Costs.

Where a party objects to any item in a bill of costs, such objections must be set forth with any supporting affidavits and documentation and must be filed with the court and served on counsel of record of adverse parties within fourteen (14) days after filing and service of the bill of costs. The party requesting the costs may file a reply to specific objections within seven (7) days of service of the objections.

(c) 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.

(d) Judicial Review.

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 within seven (7) days of the entry on the docket of the clerk's action.

(e) Attorneys' Fees.

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

(f) Procedures and Requirements for Motions for Attorneys' Fees.

Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorneys' fees authorized by law must be filed and served within fourteen (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 AND DEFAULT JUDGMENTS

The procedure for obtaining a default judgment under Fed. R. Civ. P. 55 is a two-step process: (a) entry of default by the clerk pursuant to Fed. R. Civ. P. 55(a); and (b) entry of default judgment, by the clerk when the claim is for a sum certain pursuant to Fed. R. Civ. P. 55(b)(1), and by the court in all other instances pursuant to Fed. R. Civ. P. 55(b)(2).

(a) Entry of Default.

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party shall file a "motion for entry of default" and a proposed order. The motion shall describe with specificity the method by which each allegedly defaulting party was served with process in a manner authorized by 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 has failed to plead or otherwise defend. Should the clerk determine that entry of default is not appropriate for any reason, the clerk will issue an order denying entry of default. An order denying entry of default is reviewable by the court upon motion.

(b) Default Judgment.

No motion for default judgment shall be filed unless a certificate of default has been entered by the clerk. If a party obtains a certificate of default but does not, within a reasonable time thereafter, file a motion for default judgment, 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.

(1) By the Clerk.

(A) 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. 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.

(B) 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 SUPPORTING MEMORANDA

(a) Summary Judgment Motions and Memoranda.

A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction.

(b) Motion Requirements and Supporting Evidence.

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

(1) Introduction and Relief Sought: A concise statement of each claim or defense for which summary judgment is sought, along with a clear statement of the relief requested. The parties should endeavor to address all summary judgment issues in a single motion. If a party files more than one motion, the court may strike the motion and require that the motions be consolidated into a single motion.

(2) Background (Optional): Parties may opt to include this section to provide background and context for the case, dispute, and motion. If included, this section should be placed between the Relief Sought section and the Statement of Undisputed Material Facts section. Factual summaries in the background section need not be limited to undisputed facts and need not cite to evidentiary support.

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

(4) Argument: An explanation for each claim or defense, of why, under the applicable legal principles, the moving party is entitled to judgment as a matter of law. The arguments should include a statement of each claim or defense on which the party is seeking summary judgment and supporting authorities. Any factual citations must cite to the Appendix of Evidence, not the Statement of Undisputed Material Facts.

(5) Appendix of Evidence: All evidence offered in support of the motion must be submitted in an attached appendix. The appendix should be preceded by a

captioned cover-page index that lists each exhibit by number, includes a description or title, and if the exhibit is a document, identifies the source of the document. The appendix should include complete copies of all exhibits, including complete copies of depositions, to the extent possible. In cases where lengthy depositions are relied upon, the moving party need not submit the entire deposition. However, the moving party must submit at least four (4) pages before and four (4) pages after the cited deposition transcript page(s), for a total of at least nine (9) pages.[7]

(c) Opposition Memorandum Requirements and Supporting Evidence.

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

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

(2) Background (Optional): Parties may opt to include this section to provide background and context for the case, dispute, and motion. If included, this section should be placed between the Introduction section and the Response to Statement of Undisputed Material Facts section. Factual summaries in the background section need not be limited to undisputed facts and need not cite to evidentiary support.

(3) Response to Statement of Undisputed Material Facts: A restatement of each fact the opposing party contends is genuinely disputed or immaterial, a concise statement explaining why the fact is disputed or immaterial, and a citation with particularity to the evidence upon which the non-moving party relies to refute that fact.[8] Any factual citations must reference the appropriate party's Appendix of Evidence, rather than either party's factual statements or responses. The non-

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

[8] **ADVISORY COMMITTEE NOTE:** Parties who wish to raise evidentiary objections may do so pursuant to DUCivR 7-1(b)(1)(B) and Fed. R. Civ. P. 56(c)(2).

moving party should not restate all of the moving party's statement of facts and should only respond to those facts for which there is a genuine dispute of material fact.

(4) Statement of Additional Material Facts (if applicable): If additional material facts are relevant to show that there is a genuine dispute of material fact, state each such fact and cite with particularity the evidence that supports the factual assertion from the appropriate party's Appendix of Evidence.

(5) Argument: An explanation for each claim or defense of why, under the applicable legal principles, summary judgment should be denied. Any factual citations must cite to the appropriate party's Appendix of Evidence, rather than either party's factual statements or responses.

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

(d) Reply.

The moving party may file a reply memorandum. In the reply, a moving party may cite only additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it.

(e) Citations of Supplemental Authority.

When pertinent and significant authorities come to the attention of a party after the party's memorandum in support of or in opposition to a summary judgment motion has been filed, or after oral argument but before decision, a party may promptly file a notice with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(f) Failure to Respond.

Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice, provided the moving party has established that it is entitled to judgment as a matter of law.

(g) Length of Memoranda and Filing Times.

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

(2) Filing times are governed by DUCivR 7-1.

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

DUCivR 58-1 JUDGMENT: FINAL JUDGMENT BASED UPON A WRITTEN INSTRUMENT

Unless otherwise ordered by the court, a final judgment based upon a written instrument must be accompanied by the original or certified copy of the instrument which must be filed as an exhibit in the case at the time judgment is entered. The instrument must be marked appropriately as having been merged into the judgment, must show the docket number of the action, and may be returned to the party filing the same upon order of the court only as in the case of other exhibits as provided for in DUCivR 83-5.

FED. R. CIV. P. 60

RELIEF FROM JUDGMENT OR ORDER

No corresponding local rule; however, see DUCivR 83-6 for stipulations requiring court approval.

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS

(a) Court Orders Pursuant to Fed. R. Civ. P. 67.

Any party seeking to make a Rule 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.

(b) Provisions for Designated or Qualified Settlement Funds.

(1) By Motion. Where a party seeks 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 party must identify the deposit as such in a motion for an order to deposit funds in the court's registry. Such motion also must recommend to the court an outside fund administrator who will be 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 requirements for such funds.

(2) 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 subsection (b)(1) of this rule.

(3) 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.

(c) 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 $300.00. 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.

(d) 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.

(e) Service Upon the Clerk.

Parties obtaining an order as described in section (d) of this rule must serve a copy of the order or stipulation personally upon the clerk of court or the chief deputy clerk.

(f) 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 ten (10) business days after having been served with a copy of the order or stipulation as provided in section (e) of this rule.

(g) 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.

(h) 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 (d) of this rule may be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of 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.

(i) 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 fifteen (15) days after service of the order as provided by section (e) of this rule, that the funds have been invested as ordered or stipulated.

(j) 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 (e), or failure to verify investment of the funds as specified in section (i) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

DUCivR 69-1 SUPPLEMENTAL PROCEEDINGS

(a) Motion to Appear.

Any party having a final judgment on which execution may issue may make a motion to have the judgment debtor or other person in possession of, or having information relating to, property or other assets that may be subject to execution or distraint appear in court

and answer concerning such property or assets. The moving party, on proper affidavit, may request that the debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the moving party's interest.

(b) Hearing Before Magistrate Judge.

A motion under section (a) of this rule will be presented to a magistrate judge and the matter calendared before the magistrate judge for hearing to require the debtor or other person to be examined. In any case in which the moving party seeks a restraint of the debtor's or other person's property, the magistrate judge will make findings and a report for the district judge with an order for restraint that the district judge may issue.

(c) Failure to Appear.

Should the debtor or other person fail to appear as directed, the magistrate judge may issue such process as is necessary and appropriate, including arrest, to bring the person before the court. If the conduct of the non-responding person is contemptuous, a proper reference will be made by the magistrate judge to the district judge to whom the matter has been assigned.

(d) Fees and Expenses.

The moving party must tender a witness fee and mileage or equivalent to any person, with the exception of the judgment debtor, who, under this rule, is required to appear in court.

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 72-1 MAGISTRATE JUDGE AUTHORITY

Magistrate judges in the District of Utah are authorized to perform the duties prescribed by 28 U.S.C. § 636 (a)(1) and (2), and they may exercise all the powers and duties conferred upon magistrate judges by statutes of the United States and the Federal Rules of Civil and Criminal Procedure.

DUCivR 72-2 MAGISTRATE JUDGE FUNCTIONS AND DUTIES IN CIVIL MATTERS

(a) **General Authority.**

Unless otherwise directed by the court, magistrate judges are authorized to:

(1) grant applications to proceed without prepayment of fees;

(2) authorize levy, entry, search, and seizure requested by authorized agents of the Internal Revenue Service under 26 U.S.C. § 6331 upon a determination of probable cause;

(3) conduct examinations of judgment debtors and other supplemental proceedings in accordance with Fed. R. Civ. P. 69;

(4) authorize the issuance of postjudgment collection writs pursuant to the Federal Debt Collection Act;

(5) conduct initial scheduling conferences under Fed. R. Civ. P. 16, enter stipulated scheduling orders, and grant or deny stipulated motions to amend scheduling orders;

(6) conduct all pretrial proceedings contemplated by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72 in cases assigned to them under General Order 11-001; and

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

(b) Authority **Under Fed. R. Civ. P. 72(a).**

On order of reference and under Fed. R. Civ. P. 72(a), magistrate judges are authorized to hear and determine any procedural motion, discovery motion, or other non-dispositive motion.

(c) **Authority Under Fed. R. Civ. P. 72(b).**

On order of reference and under the provisions of Fed. R. Civ. P. 72(b), magistrate judges are authorized to prepare and submit to the district judge a report containing proposed findings of fact and recommendations for disposition of motions:

(1) for injunctive relief including temporary restraining orders and preliminary and permanent injunctions;

(2) for judgment on the pleadings;

(3) for summary judgment;

(4) to dismiss;

(5) under Fed. R. Civ. P. 12(b);

(6) for default judgments; and

(7) for judicial review of administrative agency decisions, including benefits under the Social Security Act, and awards or denials of licenses or similar privileges.

Magistrate judges may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority under this section.

(d) **Authority Under 42 U.S.C. § 1983.**

On an order of reference in prisoner cases filed under 42 U.S.C. § 1983, magistrate judges are authorized to:

(1) review prisoner suits for deprivation of civil rights arising out of conditions of confinement, issue preliminary orders as appropriate, conduct evidentiary hearings or other proceedings as appropriate, and prepare for submission to the court appropriate reports containing proposed findings of fact and recommendations for disposition of the matter;

(2) take depositions, gather evidence, and conduct pretrial conferences;

(3) conduct periodic reviews of proceedings to ensure compliance with prior orders of the court regarding conditions of confinement; and

(4) review prisoner correspondence.

(e) Authority Under 28 U.S.C. §§ 2254 and 2255.

On an order of reference in a case filed under 28 U.S.C. §§ 2254 and 2255, magistrate judges are authorized to perform any or all of the duties set forth in the Rules Governing Proceedings in the United States District Courts under §§ 2254 and 2255 of Title 28, United States Code, including issuing of preliminary orders, conducting evidentiary hearings or other proceedings as appropriate, and preparing for submission to the court a report of proposed findings of fact and recommendations for disposition of the petition.

(f) Authority to Function as Special Master.

In accordance with the provisions of 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53, magistrate judges may be designated by the court to serve as special masters with consent of the parties.

(g) Authority to Adjudicate Civil Cases.

In accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, and on consent of the parties, magistrate judges may be authorized to adjudicate civil case proceedings, including the conduct of jury and non-jury trials and entry of a final judgment.

DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL DECISION

(a) Stays of Magistrate Judge Orders.

Pending a review of objections, motions for stay of magistrate judge orders shall be addressed initially to the magistrate judge who issued the order.

(b) Ruling on Objections.

Unless otherwise ordered by the assigned district judge, no response need be filed and no hearing will be held concerning an objection to a magistrate judge's order pursuant to Fed. R. Civ. P. 72(a) and 28 § 636 (b)(1)(A). The district judge may deny the objection by written order at any time, but may not grant it without first giving the opposing party an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is filed within 14 days after the objection is filed, the non-moving party shall submit to the judge a proposed order denying the objection.

DUCivR 77-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS

(a) Office of Record.

The court's office of record is located in the United States Courthouse at 351 South West Temple St., Salt Lake City, Utah 84101.

(b) Hours and Days of Business.

Unless otherwise ordered by the court in unusual circumstances, the office of the clerk will be open to the public during posted business hours on all days except Saturdays, Sundays, and legal holidays as set forth below. Court hours and days of business are posted on the court's website at http://www.utd.uscourts.gov.

The following are holidays on which the court will be closed:

- New Year's Day, January 1
- Birthday of Martin Luther King, Jr. (Third Monday in January)
- Presidents' Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day, July 4
- Pioneer Day, July 24
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans' Day, November 11
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

(c) U.S. Courts Law Library.

The United States Courts Law Library in the United States Courthouse contains non-circulating legal reference books, periodicals, and related materials. Access to the library is available to the bar and the public when library staff are on duty during normal court business hours.

DUCivR 77-2 MOTIONS GRANTABLE BY THE CLERK OF COURT

(a) Motions Grantable by the Clerk of Court.

The clerk of court is authorized to grant the following motions without a response from any opposing party and without direction by the court:

(1) motions extending once for fourteen (14) days the time within which to answer, reply, or otherwise plead to a complaint, crossclaim, or counterclaim if the time originally prescribed to plead has not expired;

(2) motions for entry of default and motions for default judgment as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1).

A motion must be filed in the docket, along with a proposed order. In addition, a proposed order in editable format must be emailed to utdecf_clerk@utd.uscourts.gov.

(b) Clerk's Action Reviewable.

The actions of the clerk of court under this rule may be reviewed, suspended, altered, or rescinded by the court upon good cause shown.

DUCivR 79-1 ACCESS TO COURT RECORDS

(a) Access to Public Court Records.

(1) Access via Internet. Cases filed after May 2, 2005, are available for review electronically via the court's website at http://www.utd.uscourts.gov. To access an electronic case file, users must first register for Public Access to Court Electronic Records (PACER) at http://pacer.psc.uscourts.gov/register.html . Lengthy exhibits, transcripts of court proceedings, and other supporting documents may be accessible only in paper format in the clerk's office. Some cases filed prior to May 2, 2005, also may be accessible electronically through PACER. PACER users are subject to a modest per-page charge for case information that is downloaded.

(2) Access in the Clerk's Office. The public records of the court are available for examination in the clerk's office during the normal business hours and days specified in DUCivR 77-1. Paper files of cases filed prior to May 2, 2005, may not be removed from the clerk's office by members of the bar or the public.

However, a clerk will make and furnish copies of official public court records upon request and upon payment of the prescribed fees.

(b) Sealed Records.

Records or exhibits ordered sealed by the court are not public records within the meaning of this rule.

(c) Search for Cases by the Clerk.

The office of the clerk is authorized to conduct searches of the most recent ten years of the master indices maintained by the clerk of court and to issue a certificate of such search. Pursuant to the fee schedule, the clerk will charge a fee, payable in advance, for each name for which a search is conducted.

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

DUCivR 81-1 SCOPE AND APPLICABILITY OF RULES

(a) Scope of Rules.

These rules apply in all civil proceedings conducted in the District of Utah.

(b) Relationship to Prior Rules; Actions Pending on Effective Date.

These rules supersede all previous rules promulgated by the United States District Court or any judge of this court. These rules govern all applicable proceedings brought in the United States District Court. They also apply to all proceedings pending at the time they take effect, except where, in the opinion of the court, their application is not feasible or would work injustice, in which event the former rules govern.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) Practice Before the Court.

Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

(b) Admission to the Bar of This Court.

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.

(2) Admissions Procedure.

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.

(B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court. The applicant(s) must be present at the time the motion is made.

(C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to sections (a) and (d) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

(D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:

> "I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States (and the constitution of the State of Utah;) that I will discharge the duties of attorney and counselor at law as an officer of (the courts of the State of Utah and) the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of

Utah."

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately if they have a change in name, email address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

(c) Active Member Status Requirement.

Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in DUCivR 83-1.2.

(d) Admission Pro Hac Vice.

(1) Non-resident attorneys who appear before this court on behalf of the United States and/or its agencies, or on behalf of an Office of the Federal Public Defender outside of the District of Utah, must file a notice of appearance that contains a statement acknowledging the attorney's obligation and agreement to abide by the Utah Rules of Professional Conduct and Civility, as outlined in subsection (g) of this rule. Prior to filing the notice of appearance, first time filers in this district must submit an Electronic Case Filing Registration to the court at ut_support@utd.uscourts.gov. The clerk will generate an e-filing login and password and email them to the newly appearing counsel. Counsel will then electronically file the notice of appearance. This notice of appearance satisfies the rules for admission without further order from the court unless an opposing party objects to the notice of appearance within fourteen (14) days of its filing. If an objection is filed, the attorney who filed the notice of appearance shall not file a response to the objection unless ordered to do so by this court.

(2) Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the

District of Columbia must be admitted pro hac vice upon completion and acknowledgment of the following in order to practice before this court:

(A) Application and Fee. Applicants must complete and submit to the clerk an application form available from the clerk's office. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee, self-certification of good standing in the bar of the highest court of another state or the District of Columbia and the applicant's agreement to read and comply with the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility.

(B) Motion for Admission. Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(C) Revocation of Pro Hac Vice Admission. Any judge of the court may revoke the admission of an attorney who has been admitted pro hac vice for good cause shown, including but not limited to, violation of the rules of this court or failure to comply with court orders. The party opposing admission pro hac vice must file an objection within fourteen (14) days of the motion or fourteen (14) days of an order granting a motion for

admission pro hac vice, whichever is later. If an objection is filed, the attorney who filed the Motion for Admission shall not file a response unless ordered to do so by this Court. An attorney admitted pro hac vice may not continue to appear pro hac vice without associated local counsel if the associated local counsel withdraws from the representation.

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

Attorneys representing the United States government or any agency or instrumentality thereof, including the Office of the Federal Public Defender, and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing agencies of the government and resident assistant Federal Public Defenders will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorney" by the United States Attorney for the District of Utah or "Special Attorney" by the Attorney General of the United States, and (ii) are members in good standing of the highest court of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

(f) Pro Se Representation.

(1) Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.

(2) Any self-represented party may file a motion requesting leave to receive

notices of electronic filings by email.

(A) Upon the granting of the motion, the party shall complete the Electronic Case Noticing Registration Form for Pro Se Parties and submit it to the clerk's office for processing. By signing the form, the party consents to (a) receive filings required to be served under Fed. R. Civ. P. 5(a) and 77(d) and Fed. R. Crim. P. 49 via email transmission and that such transmission will constitute service under those rules, (b) waive the right to service by USPS mail, and (c) notify the clerk's office of any future name, address, or email address changes.

(B) The CM/ECF system does not allow a self-represented party to elect to receive email notification in one case and decline such notification in another case. When a self-represented party obtains leave to receive email notification in any case pending before the court, that individual will automatically receive email notification of filings in all cases in which they are a self-represented party. Similarly, a self-represented party will cease to receive email notification in all cases before the court if a judge revokes the authorization in any case where the individual is a self-represented participant.

(C) The right to receive electronic notices does not change the requirement that self-represented parties file all documents conventionally in paper.

(D) Any party filing a paper document with the court must still serve the pro se party with a paper copy of the document.

(g) Rules of Professional Conduct and Standards of Professionalism and Civility.

All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, appearing on behalf of the United States and/or its agencies, or an Office of the Federal Public Defender outside the District of Utah, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this

court. The court adopts the Utah Standards of Professionalism and Civility to guide attorney conduct in cases and proceedings in this court.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

(a) General Requirement.

All attorneys admitted to the practice of law before this court must register with the clerk on or before the first day of July of each year following their admission. Each registrant must certify on the form provided by the clerk to:

(1) having read and being familiar with the District Court Rules of Practice, the Utah Rules of Professional Conduct, and the Utah Standards of Professionalism and Civility; and

(2) being a member in good standing of the Utah State Bar and the bar of this court.

(b) Categories of Membership.

All registrants for membership in the bar of this court must request on their annual registration form one of two categories of membership, as set forth below:

(1) Active Membership. All attorneys who practice in this court are required to maintain their membership in the court's bar in active status. Such status must be renewed annually and requires payment of a registration fee except where specifically exempted by this rule.

(2) Inactive Membership. Attorneys who wish to remain a member of the bar of the court but who have retired or no longer practice in this court may maintain their membership in inactive status by so notifying the clerk in writing. Attorneys filing such notice are be ineligible to practice in this court until reinstated to active status under such terms as the court may direct.

(3) Exemptions. Judges who are barred by law or rule from the practice of law are exempt from payment of the registration fee for active membership status.

(c) Non-Member Status.

Attorneys who are members but who wish to relinquish their membership status must notify the clerk in writing of their intent. Upon receiving such notification, the clerk will remove their names from the court's roll of attorneys.

(d) Failure to Register.

Attorneys who do not register with the court, who fail to pay the required fee on an annual basis, or who otherwise fail to notify the court of their intentions will receive notice via first class mail at their last-known address from the clerk of court that their right to practice in this court will be summarily suspended if they do not comply with the registration requirements within thirty (30) days of the mailing of such notice. Attorneys so suspended will be ineligible to practice in this court until their membership has been reinstated under such terms as the court may direct, including application and payment of any delinquent registration fees and payment of such additional amount as the court may direct.

DUCivR 83-1.3 ATTORNEYS - APPEARANCES BY ATTORNEYS

(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 http://www.utd.uscourts.gov. 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.

(b) Limited Appearance.

(1) An attorney acting pursuant to an agreement with a party for limited representation that complies 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) acting as counsel for a specific discovery procedure;

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

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

(2) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall 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 Rule 11.

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

(4) A party on whose behalf an attorney enters a 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.

(5) An attorney who has entered a notice of limited appearance under this section shall file a notice with the Court informing the Court when the purpose and scope of the limited appearance have been fulfilled. Failure 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.

(c) Pro Se Representation.

Individuals may represent themselves in the court. No corporation, association, partnership or other artificial entity may appear pro se but must be represented by an attorney who is admitted to practice in this court.

(d) Appearance by Party.

Whenever a party has appeared by an attorney, that party cannot appear or act thereafter in 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 may hear a party in open court. The attorney who has appeared of record for any party must:

(1) represent such 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.

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.

DUCivR 83-1.4 ATTORNEYS – SUBSTITUTION AND WITHDRAWAL 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.

(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 of 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 as 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, 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.

(2) 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 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) 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.

DUCivR-83-1.5 ATTORNEYS - DISCIPLINE OF ATTORNEYS

DUCivR 83-1.5.1 ATTORNEYS - DISCIPLINARY ACTIONS - GENERAL PROVISIONS

(a) Standards of Professional Conduct.

All attorneys practicing before this court, either as members of the bar of this court by Pro Hac Vice admission, must comply with the rules of practice adopted by this court and with 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 disciplinary jurisdiction of the court. Disciplinary proceedings 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;

(2) convicted of a serious crime, which includes, without limitation, any felony or any misdemeanor which reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney;

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

(4) the subject of an attorney misconduct complaint; or

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

(c) Disciplinary Panel.

The Chief Judge will 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. The Chief Judge will designate one Panel member as Panel Chair. If a Panel member must recuse from a disciplinary matter, 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.

(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 (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, shall 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 (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 shall be 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 shall be 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.

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 (b) of this rule.

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 twenty (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 (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 twenty (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 shall 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 (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 twenty (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 (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 twenty (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 ten (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 shall 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 ten (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 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 http://www.utd.uscourts.gov;

(3) File with the clerk a consent agreement to supervise the student in the form provided on the court's website;

(4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided on the court's website;

(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 twelve (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 83-2 ASSIGNMENT AND TRANSFER OF CIVIL CASES

Supervision of the assignment of civil cases to the judges of the court is the responsibility of the chief judge.

(a) Case Assignment System.

All case assignments are assigned by an automated case assignment system approved by the judges of the court and managed by the clerk under the direction of the chief judge. The assignment of cases shall be random, except:

(1) a case to be heard in locations other than Salt Lake City may, to reduce travel expense and time, be directly assigned to a judge resident in that location or to a judge designated for general assignment in that location;

(2) the chief judge may sua sponte assign or reassign any case upon a finding that the assignment or reassignment is necessary for the efficient administration of justice.

(b) Judicial Recusal.

In the event of a judicial recusal, another judge will be assigned to the case through the random selection case assignment system described in subsection (a) of this rule. If all

judges recuse themselves, the chief judge of the court will request the chief judge of the Tenth Circuit Court of Appeals to assign a judge from another district within the circuit to hear the matter.

(c) Emergency Matters.

In the event an assigned judge is ill, out of town, or otherwise unavailable to consider an urgent matter, application for consideration may be made to any available judge of the court. For purposes of efficiency and coordination, requests for emergency judicial action should be directed to and coordinated through the clerk.

(d) Post-Conviction Relief.

Whenever a second or subsequent case seeking post-conviction or other relief by petition for writ of habeas corpus is filed by the same petitioner involving the same conviction as in the first case, it will be assigned to the same judge to whom the original case was assigned.

(e) Section 2255 Motions.

Under Rule 4 of the Rules Governing Section 2255 Proceedings, all motions under 28 U.S.C. § 2255 will be assigned to the judge to whom the original criminal proceeding was assigned.

(f) Multiple Matters Arising Out of a Single Bankruptcy Case.

In the event multiple matters arising out of a single bankruptcy case are filed in this court (whether appeals under DUCivR 83-7.9; referrals of indirect criminal contempt of court under DUCivR 83-7.8; withdrawals of the reference of cases, proceedings or contested matters under DUCivR 83-7.4; or otherwise), the first matter will be randomly assigned to a judge of this court, as set forth in subsection (a) above. Thereafter, any and all subsequent matters arising out of the same bankruptcy case will be assigned to the judge of this court to whom the first matter was assigned.

(g) Transfer of Related Case.[9]

Whenever two or more related cases are pending before different judges of this court, any party to the later-filed case may file a motion and proposed order to transfer the case to

[9] If a case is transferred to another judge with a similar case, the transferred case will remain a separate case with its own docket and scheduling order. If consolidation–rather than transfer–is sought, please see DUCivR 42-1.

the judge with the lower-numbered case. To determine whether the case should be transferred, the court may consider the following factors:

(1) Whether the cases arise from the same or a closely related transaction or event;

(2) Whether the cases involve substantially the same parties or property;

(3) Whether the cases involve the same patent, trademark, or copyright;

(4) Whether the cases call for a determination of the same or substantially related questions of law and fact;

(5) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges;

(6) Whether there is risk of inconsistent verdicts or outcomes;

(7) Whether the motion has been brought for an improper purpose, or

(8) Other factors as provided by case law.

The motion to transfer shall be filed in the lower-numbered related case, and a notice of the motion shall be filed in the case in which transfer is sought. While the motion shall be decided by the judge assigned to the lower-numbered case, judges assigned to the cases will confer about the appropriateness of the requested transfer. The transfer of cases may also be addressed sua sponte by the court.

DUCivR 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

(a) Use of Electronic Devices.

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

(b) Photographs and Recordings.

The taking of photographs; the making of audio, mechanical, electronic, digital, or similar records in the courtroom and areas immediately adjacent thereto in connection with any judicial proceeding, including recesses; and the broadcasting of judicial

proceedings by radio, television, telephone, or other devices or means, are prohibited. In addition, the advertising or posting of audio, video, or other forms of recordings or transcripts of court proceedings made in violation of this rule on any Internet website, blog, or other means of transmitting such information via electronic means is prohibited. Violation of these prohibitions is sanctionable by the court and may result in confiscation of the offending device by the United States Marshal or deputized Court Security Officer.

(c) Credentialed Media.

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

(d) Exceptions.

The court may permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, naturalization, and other similar proceedings. The court also may permit the use of electronic, digital, mechanical, or photographic means for the presentation of evidence, for perpetuation of a record, or as otherwise authorized by the court.

DUCivR 83-4 COURT SECURITY

(a) Application of the Rule.

This rule applies to any building and environs occupied or used by the United States Courts in the District of Utah. It is in effect at all times that district judges, magistrate judges, or other court personnel are present, whether or not court is in session.

(b) Persons Subject to Search.

All persons seeking entry to a building occupied or used by the United States Courts in the District of Utah are subject to search by the United States marshal, deputy United States marshals, or other court security officers designated by the marshal or the court. All persons other than authorized officers and employees of the United States

Government are required, upon entering the United States Courthouse or other place of holding court in the District of Utah, to submit their persons and belongings in their possession at the time of entry to electronic detection equipment under the supervision of the marshal.

(c) Weapons.

With the exception of weapons carried by the United States marshal, deputy United States marshals, court security officers, or federal protective officers, no weapons other than exhibits will be permitted in any place of holding court in the District of Utah; no other person may bring a weapon other than an exhibit into any place of holding court except as specifically permitted by this rule. The carrying of mechanical, chemical, and other weapons into any place of holding court in the District of Utah is subject to the provisions of the Weapons Policy for the District of Utah as set forth by the Court Security Committee and enforced by the United States marshal. The Weapons Policy is available for review on the court's website http://www.utd.uscourts.gov.

(d) Safety.

The court may require that any firearm, other mechanical or chemical weapon, or potentially explosive device intended for introduction as an exhibit first be presented to the United States marshal's office for a safety check prior to its being brought into any courtroom.

DUCivR 83-5 CUSTODY AND DISPOSITION OF 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.

(b) During Trial.

(1) Custody of the Clerk. Unless the court orders otherwise, all exhibits that are admitted into evidence during trial and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.

(2) Custody of the Parties. Unless the court otherwise orders, all other 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 bulky or sensitive exhibits or evidence: controlled substances, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, and 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.

(1) Exhibits in the Custody of the Clerk. Where the clerk of court does take custody of exhibits under subsection (b)(1) of this rule, such 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 fourteen (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

fourteen (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 subsection (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.

DUCivR 83-6 STIPULATIONS: PROCEDURAL REQUIREMENT

No stipulation between the parties modifying a prior order of the court or affecting the course or conduct of any civil proceeding will be effective until approved by the court.

DUCivR 83-7.1 BANKRUPTCY - ORDER OF REFERENCE OF BANKRUPTCY MATTERS TO BANKRUPTCY JUDGES

Under 28 U.S.C. § 157(a), unless a rule or order of this court expressly provides otherwise, any and all cases under Title 11 and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for the District

of Utah for consideration and resolution consistent with the law. This reference applies to all pending bankruptcy cases and proceedings except those currently before the district court and to all bankruptcy cases and proceedings hereafter filed in the District of Utah.

DUCivR 83-7.2 BANKRUPTCY - REMOVAL OF CLAIMS OR ACTIONS RELATED TO BANKRUPTCY CASES

Pursuant to Fed. R. Bank. P. 9027 and DUCivR 83-7.1, a notice of removal under 28 U.S.C. § 1452(a) shall be filed with the clerk of the bankruptcy court.

DUCivR 83-7.3 BANKRUPTCY - TRANSFER OF PERSONAL INJURY TORT AND WRONGFUL DEATH CLAIMS TO THE DISTRICT COURT

Personal injury tort and wrongful death claims referred to the bankruptcy court under DUCivR 83-7.1 shall be transferred to the District Court when required under 28 U.S.C. § l57(b)(5) pursuant to an order of the bankruptcy court on the court's own motion or on the motion of a party filed at any time in accordance with the procedures set forth in DUCivR 83.7-4.

DUCivR 83-7.4 BANKRUPTCY - WITHDRAWAL OF THE REFERENCE OF BANKRUPTCY CASES, PROCEEDINGS AND CONTESTED MATTERS

(a) Motion to Withdraw the Reference.

A person seeking to withdraw a case, adversary proceeding or contested matter which has been referred to the bankruptcy court under 28 U.S.C. § 157 (a) and DUCivR83-7.1 must file in the bankruptcy court the following documents:

(1) a motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) and Fed. R. Bank. P. 5011 (the "Withdrawal Motion");

(2) an ex parte application seeking an order of the bankruptcy court transmitting such motion to the district court; and

(3) a proposed order approving the application and authorizing the transmittal of the motion to the district court (the "Transmittal Order").

(b) Grounds for Withdrawal of the Reference.

A Withdrawal Motion must certify that:

(1) Withdrawal of the reference is mandatory under 28 U.S.C. § 157(b)(5) because the proceeding is a personal injury tort or a wrongful death claim;

(2) Withdrawal of the reference is mandatory under 28 U.S.C. § 157(d) because resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce;

(3) Withdrawal of the reference is appropriate because cause exists under 28 U.S.C. § 157(d). The alleged cause must be specified.

(c) Time for Making a Withdrawal Motion.

(1) Cases. A Withdrawal Motion seeking to withdraw the reference of a case may be made at any time.

(2) Adversary Proceedings. An original plaintiff seeking to withdraw the reference of an adversary proceeding must file a Withdrawal Motion within twenty-one (21) days after the proceeding is commenced. An original defendant, intervenor, or an added party, seeking to withdraw the reference of an adversary proceeding, must file a Withdrawal Motion within twenty-one (21) days after entering an appearance in the adversary proceeding. In adversary proceedings that have been removed to the bankruptcy court under 28 U.S.C. § 1452, a removing party seeking to withdraw the reference must file a Withdrawal Motion within twenty-one (21) days after filing the notice of removal; and other parties must file a Withdrawal Motion within twenty-one (21) days after service of notice of removal.

(3) Contested Matters. In contested matters, the person initiating the contested matter must file a Withdrawal Motion simultaneously with, but separate from, the motion or application initiating the contested matter. Any other person seeking to withdraw the reference of a contested matter must file a Withdrawal Motion

simultaneously with the filing of its initial response to the motion or application initiating the contested matter.

(d) Transmittal of Withdrawal Motion to District Court and Opening of Miscellaneous Action.

(1) Transmittal. Upon the bankruptcy court's entry of a Transmittal Order, the Withdrawal Motion together with the Transmittal Order shall be transmitted to the district court, and notice of the transmittal shall be noted on the bankruptcy court's docket in the case or proceeding.

(2) Opening of Miscellaneous Action. Upon transmittal, the district court clerk shall open a miscellaneous action. In the miscellaneous action, the party who filed the Withdrawal Motion shall be designated as the Petitioner, and all parties opposing the Withdrawal Motion shall be designated as Respondents. Upon transmittal of the Withdrawal Motion to the district court, all filings related to the Withdrawal Motion, including memoranda in opposition to the Withdrawal Motion and memoranda in reply thereto, shall be made in the district court miscellaneous action and shall be governed by these rules of practice.

(e) Procedure Upon Granting of Withdrawal Motion as to a Proceeding or Contested Matter.

In the event a Withdrawal Motion is granted by the district court with respect to a proceeding or contested matter, the applicable proceeding or contested matter shall be transferred to the district court in accordance with this rule.

(1) Conversion of Miscellaneous Action to Civil Action. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall convert the pending miscellaneous action into a civil action, and shall change the caption of the action, such that the title of each party in the civil action is consistent with its title in the bankruptcy court prior to transfer to the district court (*e.g*. plaintiff/defendant; debtor/creditor; movant/respondent, as applicable). The district court clerk shall note on the docket of the civil action that the applicable proceeding or contested matter has been transferred to the district court from the bankruptcy court. Such notation shall also identify the bankruptcy court number of the applicable proceeding which has been transferred from the bankruptcy court; or in the event

of a transfer of a contested matter, the notation shall identify the bankruptcy court number of the case from which the contested matter has been transferred.

(2) Notation on Bankruptcy Court Docket. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall transmit a copy of such order to the bankruptcy court for filing in the applicable bankruptcy case or proceeding. Upon such transmittal, the clerk of the bankruptcy court shall note on the bankruptcy court docket that the applicable adversary proceeding or contested matter has been transferred to the district court. Such notation shall also identify the district court civil number of the transferred proceeding or contested matter.

(3) Transfer to District Court. Upon the entry of an order granting a Withdrawal Motion, the applicable proceeding or contested matter shall be deemed transferred to the district court, and all subsequent filings therein shall be made in the district court civil action, bearing the appropriate district court caption and civil number. Upon transfer to the district court, the transferred proceeding or contested matter shall be governed in all respects by these local rules of practice; except that, unless the district court orders otherwise, all existing deadlines pending at the time of transfer shall remain in effect.

(4) Refiling of Pending Motions. If there is any pending motion in the transferred proceeding or contested matter which has not been ruled upon by the bankruptcy court prior to the time of transfer to the district court, the party who initially filed the motion shall file the same motion in the district court civil action, if it desires the district court to enter a ruling with respect to such motion. Each refiled motion shall include a cover sheet, bearing the appropriate district court caption and civil number, which identifies by name, date, and bankruptcy court docket number, every memoranda and affidavit filed in support of, and in opposition to, the motion prior to the time of transfer to the district court. The refiling of pending motions under this rule is for the administrative convenience of the district court, and shall not affect any deadlines with respect to filing memoranda in response to the motion, or filing memoranda in reply thereto.

(f) Procedure Upon Granting of Withdrawal Motion as to a Case.

In the event a Withdrawal Motion is granted by the district court with respect to a case, the district court shall enter an appropriate order governing the process for the transfer of the case from the bankruptcy court to the district court.

DUCivR 83-7.5 BANKRUPTCY - DETERMINATION OF PROCEEDINGS AS "NON-CORE"

A particular proceeding will be determined to be "non-core" under 28 U.S.C. § 157(b) only if a bankruptcy judge so determines sua sponte or rules on a motion of a party filed under 28 U.S.C. § 157(b)(3) within the time periods fixed by DUCivR 83-7.4. A determination that a related proceeding is "non-core" must be in accordance with 28 U.S.C. § 157(b). Non-core proceedings heard pursuant to 28 U.S.C. § 157 (c)(1), shall be governed by Fed. R. Bank. P. 9033.

DUCivR 83-7.6 BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE

Under Fed. R. Civ. P. 83 and Fed. R. Bank. P. 9029, the district court authorizes the bankruptcy court to adopt rules of practice not inconsistent with Title 11 and Title 28 of the United States Code, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the District Court Rules of Practice of the United States District Court for the District of Utah.

Such rules of practice will (i) be subject to approval, ratification, or modification by the district court and, (ii) upon such approval, ratification, or modification, be promulgated and applied uniformly by each of the bankruptcy court judges in this district.

DUCivR 83-7.7 BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT

Under 28 U.S.C. § 157(e), the district court authorizes and directs the bankruptcy judges to conduct jury trials in all proceedings in which a party is entitled to trial by jury and a jury is timely demanded, except when prohibited by applicable law. Fed. R. Civ. P. 47-51 and the

applicable District Court Rules of Practice will apply to the conduct of a jury trial by a bankruptcy judge.

DUCivR 83-7.8 BANKRUPTCY - INDIRECT CRIMINAL CONTEMPT OF BANKRUPTCY COURT

Bankruptcy judges may not exercise powers of criminal contempt except when such conduct is committed in the presence of the court. If a bankruptcy judge has reasonable grounds for belief that there has been a commission of any act or conduct deemed to constitute criminal contempt not committed in the presence of the court, the bankruptcy judge may certify forthwith such facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this rule an order requiring such person to appear before a judge of that court upon a day certain to show cause why such person should not be adjudged in contempt by reason of the facts so certified. A judge of the district court, thereupon, in a summary manner will hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, may punish such person in the manner and to the same extent as for an equivalent contempt committed before a judge of the district court.

DUCivR 83-7.9 BANKRUPTCY - APPEALS TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT UNDER 28 U.S.C. § 158

(a) Applicable Authority.

Appeals to the United States District Court for the District of Utah from the Bankruptcy Court under 28 U.S.C. § 158 must be taken as prescribed in Part VIII of the Fed. R. Bank. P. 8001 et seq., these Local Rules, and the following Local Rules of the U.S. Bankruptcy Appellate Panel of the Tenth Circuit, effective December 1, 2014 (the "BAP Rules"): 8003-1, 8003-2(b), 8003-2(c); 8003-3, 8007-1, 8009-1, 8009-2, 8009-3, 8012-1, 8013-1(a), 8013-1(b), 8013-1(c), 8014-1, 8015-1, 8022-1, 8024-3, 8026-1, and 8026-4. The BAP Rules are available at www.bap10.uscourts.gov/rules.php. When applying the BAP Rules, any reference therein to the bankruptcy appellate panel clerk means the clerk of this Court, and any reference to "this court" means this District Court.

(b) Transmittal Rule.

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

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

(1) Preliminary Transmission from Bankruptcy Court. Promptly after a notice of appeal and a statement of election are filed, the bankruptcy court clerk will transmit to the clerk a copy of the following:

(i) the bankruptcy court docket entries in the case and the adversary proceeding, if applicable;

(ii) the notice of appeal and the statement of election;

(iii) any motion to extend time to file the notice of appeal and the order disposing of the motion;

(iv) the bankruptcy court's judgment or order being appealed and any written findings and conclusions or opinion of the bankruptcy court; and

(v) any post-judgment motion regarding the appealed judgment or order and any other disposing of the motion.

(2) Preliminary Transmission from Bankruptcy Appellate Panel. When a statement of election is filed after an appeal has been docketed by the bankruptcy appellate panel, the clerk of the bankruptcy appellate panel will transmit to the clerk a copy of the following:

(i) any documents transmitted by the bankruptcy court clerk to the bankruptcy appellate panel clerk, and

(ii) the bankruptcy appellate panel docket entries and copies of any documents filed with the bankruptcy appellate panel clerk.

(3) Opening of a Case. Upon receipt of the preliminary transmission under subsections (1) or (2) above, the clerk must open a case, and all documents related to the appeal thereafter shall be filed in that case.

(4) Supplemental Transmission. After the preliminary transmission has been sent, if any motion regarding the appealed judgment or order is filed, the bankruptcy

court clerk or the bankruptcy appellate panel clerk, as applicable, must transmit to the clerk a copy of the motion, any order disposing of the motion, and the related docket entries.

(5) Transmission of the Record. Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bank. P. 8010.

(d) Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 8011.

(1) Appellant's Brief. The appellant's brief must be filed within 45 days after the date of the notice that the appeal has first been docketed with the bankruptcy appellate panel or this Court, whichever date is earlier.

(2) Appendix. The appellant's appendix must be filed with its brief, within 45 days after the date of the notice that the appeal has first been docketed with the bankruptcy appellate panel or this Court, whichever date is earlier.

(i) Form. The appendix must be separate from the brief.

(ii) Table of Contents. The appendix must be paginated and must include a table of contents.

(iii) Order of Papers. The relevant bankruptcy court docket entries must be the first papers in the appendix. Copies of papers filed with the bankruptcy court should be arranged in chronological order according to the filed date, with any exhibit or transcript included as of the date of the hearing.

(iv) Transcripts. The appendix must contain all transcripts, or portions of transcripts, necessary for the Court's review.

(v) Bankruptcy Court's File Stamp. Copies of all papers included in the appendix must show the bankruptcy court's mechanical or digital file stamp, or equivalent evidence of filing with the bankruptcy court.

(vi) Multiple Parties. If multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously-filed appendix and may adopt the items by reference.

(vii) Exemptions. If papers to be included in an appendix are not susceptible of copying, or are so voluminous that copying is excessively burdensome or costly, a party should file a motion to exempt the papers from the appendix and file them separately.

(viii) Sealed Papers. Copies of papers filed under seal with the bankruptcy court should be included in an addendum to the appendix, accompanied by a motion to place the papers under seal with this Court.

(3) Number of Copies - Courtesy Copies. Parties must file briefs and appendices electronically in accordance with these Rules. Additionally, one (1) courtesy copy of any brief and appendix must be provided to the Court upon electronic filing. The courtesy copy of the appendices must be bound or in a binder, and the contents must be tabbed consistent with the appendices and table of contents. An electronic copy of the appendix on a CD or DVD must be included with the courtesy copy.

DUCivR 86-1 EFFECTIVE DATE

These rules are effective December 1, 2019.