

Consent Cases Closed 2013 - 2017

Judge	2013	2014	2015	2016	2017	Total Closed by MJs
Warner	48	57	57	40	53	255
Wells	42	36	33	31	58	200
Furse	38	49	49	39	51	226
Pead	45	42	41	43	66	237
TOTAL	173	184	180	153	228	918
Total Civil Filings	1343	1134	1092	1490	1527	
% of Total Civil Filings	13%	16%	16%	9%	15%	

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

)	
)	CASE No.
PLAINTIFF,)	
)	
)	NOTICE OF ASSIGNMENT TO A
vs.)	UNITED STATES MAGISTRATE
)	JUDGE AND CONSENT/
)	REQUEST FOR REASSIGNMENT
)	
DEFENDANT.)	
_____)	

In accordance with United States District Court for the District of Utah General Order 11-001, and Fed. R. Civ. P. 73, you are notified that the above entitled action has been assigned to a United States Magistrate Judge to conduct all proceedings in this case, including trial, entry of final judgment, and all post-judgment proceedings. Exercise of this jurisdiction by a United States Magistrate Judge is permitted only if all parties file a written consent. **Indicate below whether you consent to the assignment or request the case be reassigned to a district court judge.**

Consent

Party(s) represented

Attorney Signature

Date

Reassignment

Party(s) represented

Attorney Signature

Date

Return this form within 15 days of receipt. After completing this form, counsel are required to **e-mail** this form in PDF format by sending it to consents@utd.uscourts.gov. Alternatively, the form may be mailed to the following address: U.S. District Court, 351 S. West Temple Street, Salt Lake City, Utah 84101, Attention: Consent Clerk. **Do not e-file this document.**

No judge will be informed of a party's response to this notification, unless all parties have consented to the assignment of the matter to a United States Magistrate Judge


An appeal from a judgment entered by a United States Magistrate Judge will be made directly to the United States Court of Appeals for the Tenth Circuit in the same manner as an appeal from any other judgment of this district. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73.

Sample Consent Docket Text

Consent Docket Flag:

CONMAGTRL,JURY,OPEN_MJ	
Email All Attys	
Email All Attys and Secondary Emails	
US District Court Electronic Case Filing System District of Utah (Central) CIVIL DOCKET FOR CASE #: 2:16-cv-00250-DBP Internal Use Only	
Marcantel v. Stewart Title Guaranty Company et al Assigned to: Magistrate Judge Dustin B. Pead Demand: \$745,000 Cause: 28:1332 Diversity-Insurance Contract	Date Filed: 03/29/2016 Jury Demand: Plaintiff Nature of Suit: 110 Insurance Jurisdiction: Diversity
CONMAGTRL,JURY,OPEN_MJ	
Email All Attys	
Email All Attys and Secondary Emails	

Consent Docket Text:

05/25/2016	 20	JOINT STATEMENT OF PARTIES/ CONSENT to Jurisdiction by US Magistrate Judge under 28 U.S.C. 636(c) by Defendants Coalition Title Agency, Michael and Sonja Saltman Family Trust, Michael A. Saltman, Sonja Saltman, Stewart Title Guaranty Company, Plaintiff Curt A. Marcantel. (Attachments: # 1 Consent, # 2 Consent, # 3 Consent)(las) (Entered: 05/25/2016)
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Wine and Cheese: Magistrate Judge and District Judge Pairings



Hon. Dustin Pead
Hon. Robert Shelby
Hon. David Nuffer
Anne Morgan

**Southern Utah Federal Law Symposium
May 8, 2015**

Wine and Cheese: Magistrate Judge and District Judge Pairings

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I. Magistrate Judge Authority

Magistrate judges receive cases by referral from the district court under one of two alternative statutory provisions. Magistrates can also receive cases when parties consent to have their case decided, in whole or in part, by a magistrate judge.

a. Referrals pursuant to 28 U.S.C. § 636(b)(1)(A)

First, under an “A” referral (so called for the Section of the US Code authorizing it, 28 U.S.C. § 636(b)(1)(A)), labor is divided between the district court who handles dispositive matters and the magistrate judge who decides all “nondispositive” matters. While the Federal Rules use the term nondispositive, this term is somewhat imprecise regarding the range of matters involved in an “A” referral. The statute allows the magistrate to decide:

any pretrial matter . . . except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

28 U.S.C. § 636(b)(1)(A). Likewise, this provides only the statutory authority. District judges differ somewhat with respect to motions they might prefer to handle and your experience in a particular case may vary. If you have a case that has been referred under Section 636(b)(1)(A), you can very likely expect to go before the assigned magistrate judge on any discovery or scheduling matter. This division of labor may change as the matter moves closer to trial. Even though many nondispositive motions may be filed, the litigants may find themselves before the district court as it decides evidentiary matters that will govern the trial. Finally, the Rules of Civil Procedure require the magistrate judge to “promptly conduct the required proceeding” and issue an appropriate order. Fed. R. Civ. P. 72(a). Thus, matters referred to a magistrate judge should be resolved relatively quickly consistent with the court’s role to assist the district court.

b. Referrals pursuant to 28 U.S.C. § 636(b)(1)(B)

Next, under a “B” referral, the magistrate considers all motions (including dispositive motions); however, when deciding any dispositive matter identified above, the magistrate judge issues a report and recommendation, rather than an order. The report and recommendation is not final until the district court enters an order adopting it. The statute also authorizes magistrate judges to “conduct hearings, including evidentiary hearings” that might be necessary in deciding any matters before the court. 28 U.S.C. § 636(b)(1)(B). As with “A” referrals, magistrate judges are required to “promptly conduct the required proceedings” necessary to issue a report and recommendation on a matter on a “B” referral. Fed. R. Civ. P. 72(b)(1).

c. Consent pursuant to 28 U.S.C. § 636(c)

Finally, the parties in any case pending before the district court may consent to jurisdiction of a magistrate pursuant to Section 636(c). The statutory provision allows magistrate judges to preside over all aspects of a civil case, “when specially designated to exercise such jurisdiction by the district court or courts he serves.” 28 U.S.C. § 636(c). The District of Utah allows magistrates to exercise authority to the full extent granted by the statute. *See* D.U. Civ. R. 72-2(g) (“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.”). The parties can also consent to magistrate jurisdiction for less than the full case. For example, the parties could consent to a magistrate for discovery only, thus expediting the process by eliminating opportunities to object to the district court. *See* Morton Denlow, *Should You Consent to the Magistrate Judge? Absolutely, and Here's Why*, *Litigation*, Winter 2011, at 3, 6 (discussing partial consent in cases involving complex discovery and other discrete matters).

II. Challenging a magistrate’s decision

Litigants may challenge a magistrate judge’s decision in a referral case in one of two ways. The type of challenge available to a litigant depends on whether the magistrate judge issued an order, or a report and recommendation.

a. Objections to report and recommendation

If a party elects to object to a magistrate judge’s report and recommendation, such objection must be filed within 14 days after service. Fed. R. Civ. P. 72(b)(2). The district court will review *de novo* portions of the report to which a party objects and “may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3). While the review is *de novo*, challenges to a magistrate judge’s report and recommendation are unlikely to succeed without some demonstration of significant error. *See* Christina L. Boyd and Jacqueline M. Sievert, *Unaccountable Justice? The Decision Making of Magistrate Judges in the Federal District Courts*, 34 *Just. Sys. J.* 3, 262 (2013) (concluding that “nearly all magistrate recommendations are adopted by the assigned district judge.”).

b. Objections to orders on nondispositive matters

If a party objects to a magistrate judge’s order, the objection must be filed within 14 days after service of the order. Fed. R. Civ. P. 72(a). It is important to note that the procedure for objecting to a magistrate judge’s order remains the same whether the case is an “A” referral or a “B” referral. The procedure for challenging a magistrate judge’s decision depends on the type of decision and whether it is an order, or a report and recommendation. When considering an objection to a magistrate judge’s order, the district court will modify or set aside only those portions of the order that are “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a). A party challenging a magistrate’s order bears a heavy burden to convince the district court that the magistrate judge committed error.

Also, there is no automatic stay of a magistrate's order while an objection is pending. The objecting party needs to seek a stay, if one is necessary, and applications for a stay are decided in the first instance by the magistrate judge. D.U. Civ. R. 72-3(a).

c. Appeal to the Tenth Circuit

Any challenge to a magistrate judge's decision in a consent case lies with the appropriate court of appeals and proceeds as "any other appeal from a district-court judgment." Fed. R. Civ. P. 73(c); *see* 28 U.S.C. § 636(c)(3).

III. Advantages of consent under 28 U.S.C. § 636(c)

- Likely to receive a more firm early trial date
 - Magistrates do not try felony criminal trials, with Speedy Trial concerns
 - Magistrates generally have more flexibility in their calendars, subject to criminal duty rotation.
- Avoid duplication of efforts
 - One judge is familiar with both discovery motions and substantive motions
 - Objections to the district court slow down litigation and increase expense
 - Consent thus results in value for the client
- Eliminate legal limbo while a report and recommendation is pending
- Social Security cases as an example
 - Anyone practicing in this area knows how long these can take, but consent has proven effective for speedy consideration
 - Court of appeals reviews cases de novo
 - The notion of a second bite of the apple before the District Court is illusory: "nearly all magistrate recommendations are adopted by the assigned district judge." Christina L. Boyd and Jacqueline M. Sievert, *Unaccountable Justice? The Decision Making of Magistrate Judges in the Federal District Courts*, 34 Just. Sys. J. 3, 262 (2013).
- Employment discrimination cases could provide another opportunity for speedy resolution before a magistrate
- Consent in discovery-intensive case cuts down on delays from potential objections to the district court, and magistrate judges have extensive discovery experience

IV. Local rules and standard practice employed to speed case resolution

The court regularly seeks to expedite consideration and determination of pretrial issues through the local rules and standard practice. Two often-employed methods for expediting a case are the Short Form Discovery Procedure and orders to expedite briefing.

a. Short-form discovery

With increasing frequency, judges order parties to comply with the Short Form Discovery Motion Procedure. See www.utd.uscourts.gov/documents/ShortFormDiscoveryMotion.pdf. As with any discovery dispute, the parties are required to attempt to resolve the dispute without Court intervention, though the Short Form Discovery Procedure lays out a specific method for the meet and confer. Motions are frequently denied as a result of the parties' failure to make meaningful efforts to narrow their dispute(s).

If these attempts at resolution prove unsuccessful, the parties may file, individually or jointly, a short motion (500 words or fewer) describing the dispute and seeking resolution. The parties must attach the request and response at issue to the motion. Each party should also submit a proposed order to chambers via email. Finally, all staff and attorneys should be trained to request expedited treatment when filing the motion through CM/ECF so the court is made aware that there is a pending short-form discovery motion. The court will take action as soon as practicable and in most cases will decide the motion or set a hearing to resolve it. If the court finds additional briefing is necessary, it will request it and set briefing deadlines. The best way to avoid a request for additional briefing is to narrow the issues during the required conference.

b. Orders expediting briefing

Additionally, judges commonly order expedited briefing on various pretrial matters, as authorized by the Local Rules: "The court may order shorter briefing periods and attorneys may also so stipulate." D.U. Civ. R. 7-1(b)(3). Shortened briefing is a common occurrence in matters in which parties seek a decision in advance of a deadline, or where the court seeks completed briefing to preserve a trial or discovery cutoff date. As the rule indicates, the parties do not need to wait for the court to order expedited briefing. They are free to stipulate to it and encouraged to do so. Particularly where a dispute involves a purely legal question without a great detail of nuance, this process can help streamline civil litigation.

APPENDIX OF RELEVANT STATUTES AND RULES

I. Statutes

a. 28 U.S.C. § 636(b)(1)(A)

Notwithstanding any provision of law to the contrary . . . a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

b. 28 U.S.C. § 636(b)(1)(B)

Notwithstanding any provision of law to the contrary . . . a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

c. 28 U.S.C. § 636(c)(1)

Notwithstanding any provision of law to the contrary . . . Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

II. Rules of Civil Procedure

Rule 72. Magistrate Judges: Pretrial Order

(a) NONDISPOSITIVE MATTERS. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The

district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

(b) DISPOSITIVE MOTIONS AND PRISONER PETITIONS.

(1) *Findings and Recommendations.* A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

(2) *Objections.* Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

(3) *Resolving Objections.* The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Rule 73. Magistrate Judges: Trial by Consent; Appeal

(a) TRIAL BY CONSENT. When authorized under 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. § 636(c)(5).

(b) CONSENT PROCEDURE.

(1) *In General.* When a magistrate judge has been designated to conduct civil actions or proceedings, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. § 636(c). To signify their consent, the parties must jointly or separately file a statement consenting to the referral. A district judge or magistrate judge may be informed of a party's response to the clerk's notice only if all parties have consented to the referral.

(2) *Reminding the Parties About Consenting.* A district judge, magistrate judge, or other court official may remind the parties of the magistrate judge's availability, but must also advise them that they are free to withhold consent without adverse substantive consequences.

(3) *Vacating a Referral.* On its own for good cause—or when a party shows extraordinary circumstances—the district judge may vacate a referral to a magistrate judge under this rule.

(c) APPEALING A JUDGMENT. In accordance with 28 U.S.C. § 636(c)(3), an appeal from a judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

III. District of Utah Local Rules

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

(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

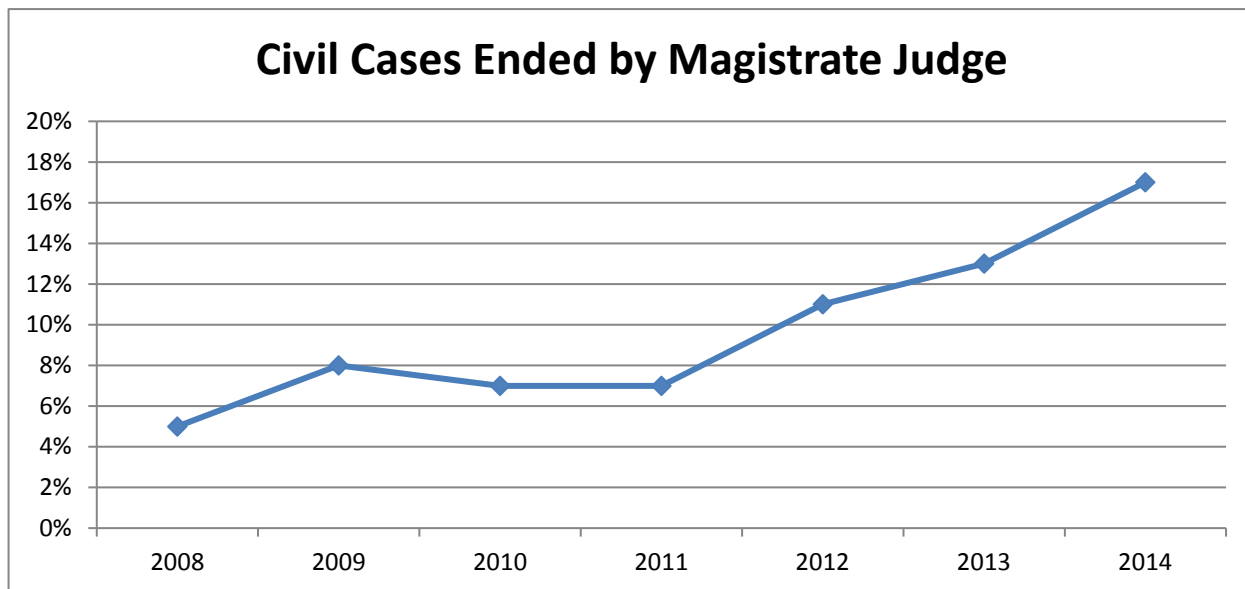
(a) Stays of Magistrate Judge Orders.

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.

	2008	2009	2010	2011	2012	2013	2014
Cases Ended w/MJ Presider	57	89	92	108	167	174	215
Total Civil Cases Ended	1064	1112	1350	1443	1488	1356	1271
Percent Magistrate Judge Dispositions	5%	8%	7%	7%	11%	13%	17%



District Judges

- Chief Judge David Nuffer
- Judge Clark Waddoups
- Judge Robert J. Shelby

- Senior Judge Bruce S. Jenkins
- Senior Judge David Sam
- Senior Judge Dale A. Kimball
- Senior Judge Tena Campbell
- Senior Judge Dee Benson
- Senior Judge Ted Stewart

Magistrate Judges

- Chief Magistrate Judge Brooke C. Wells
- Magistrate Judge Paul M. Warner
- Magistrate Judge Robert T. Braithwaite

- Magistrate Judge Evelyn J. Furse
- Magistrate Judge Dustin B. Pead

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

(a) Discovery Disputes.

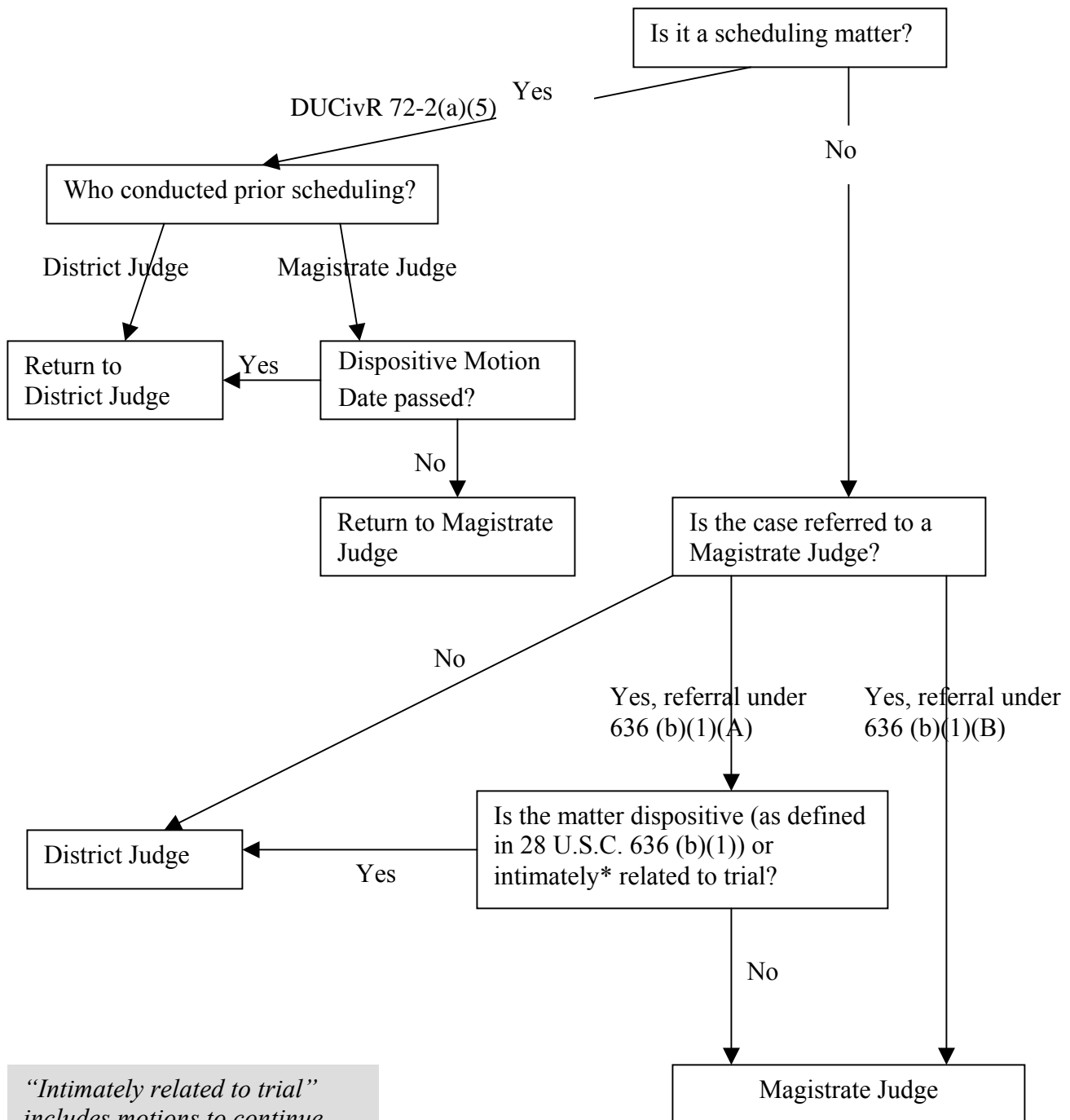
- (1) The parties must make reasonable efforts without court assistance to resolve a dispute arising under Fed. R. Civ. P. 26-37 and 45. At a minimum, those efforts must include a prompt written communication sent to the opposing party:
 - (A) identifying the discovery disclosure/request(s) at issue, 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 e-mail chambers a proposed order setting forth the relief requested in a word processing format.
- (5) The parties must request expedited treatment as additional relief for the motion in CM/ECF to facilitate resolution of the dispute as soon as practicable. (After clicking the primary event, click Expedite.)

The screenshot displays the 'Motions' section of the CM/ECF system. At the top, there is a search bar with the placeholder text 'Start typing to find another event.' Below this, the interface is divided into two main columns. The left column, titled 'Available Events (click to select events)', contains a list of event types: Disqualify Counsel, Disqualify Judge, Disqualify Juror, Enforce, Enforce IRS Summons, Enforce Judgment, Entry of Default, Entry of Judgment, Exclude, Expedite (highlighted in blue), Extension of Time, Extension of Time re Transcript, Extension of Time to Amend, Extension of Time to Complete Discovery, and Extension of Time to File Answer. The right column, titled 'Selected Events (click to remove events)', shows a list of selected events: Disqualify Judge and Expedite. At the bottom of the interface, there are two buttons: 'Next' and 'Clear'.

- (6) The opposing party must file its response five business days⁵ 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 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.

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

Which Judge should hear this motion?



“Intimately related to trial” includes motions to continue, motions in limine, Markman and Daubert hearings

Civil Scheduling Matters Handled by Magistrate Judge Furse and the IPT Clerk

	Setting IPTs	Preparing Initial Scheduling Orders	Preparing Amended Scheduling Orders
District Judges			
David Nuffer	YES	YES	YES
Clark Waddoups	YES	YES	NO
Robert J. Shelby	YES	YES	NO
Bruce S. Jenkins	NO	NO	NO
David Sam	NO	NO	NO
Dale A. Kimball	YES	YES	NO
Tena Campbell	YES	YES	NO
Dee Benson	YES	YES	YES
Ted Stewart	YES	YES	NO
Magistrate Judges			
Brooke C. Wells	YES	YES	NO
Paul M. Warner	YES	YES	NO
Dustin B. Pead	YES	YES	NO
Evelyn J. Furse	YES	YES	YES

See <http://www.utd.uscourts.gov/documents/ipt.html> for much more information on civil scheduling.

Civil Motion Referral and Unreferral

District Judge refer cases (and sometimes individual motions) to magistrate judges. Then, CM/ECF computer logic takes over and, based on the type of motion filed, indicates whether a motion is referred or not. CM/ECF logic is not always consistent with the actual needs of a case because CM/ECF does not understand all court operations and cannot correctly categorize every motion.

Attorneys will sometimes see that a motion is referred, and then the referral is withdrawn. This paper describes the CM/ECF process of motion referral and unreferral, and the reasons for unreferral. It is intended to provide a guide for attorneys to understand the allocation of responsibilities between district judges and magistrate judges and the interplay of those responsibilities with CM/ECF. Direct communication with judges' chambers can always help clarify what CM/ECF might confuse. Judges chambers attempt to communicate with each other as well.

Glossary:

CM/ECF – Case Management – Electronic Case Files – the current case filing system in the District of Utah

Referral – the process by which the presiding district judge directs a magistrate judge to handle a portion of a case.

“A” Referral – referral of all pretrial, non dispositive matters. “A” refers to the statute, [28 U.S.C. §636\(b\)\(1\)\(A\)](#). A magistrate judge resolves these matters by a direct order. *See also* [Fed R. Civ. P. 72\(a\)](#).

“B” Referral – referral of all matters in a case, including dispositive matters. “B” refers to the statute, [28 U.S.C. §636\(b\)\(1\)\(B\)](#). A magistrate judge resolves these matters by Report and Recommendation. *See also* [Fed R. Civ. P. 72\(b\)](#).

Dispositive – referring to case dispositive matters. This term is not used in the statute, but it is used in Rule 72. The statute contains an illustrative list of matters¹ for which a referred magistrate judge can only issue a report and recommendation, not a direct order.

CM/ECF Motion Referral Tracking:

An important feature of CM/ECF is its ability to designate (in referred cases) which motions are to be decided by magistrate judges and which motions are to be decided by district judges.

CM/ECF internal logic automates designations of motions as referred or not referred. This logic is different for cases referred under 28 U.S.C. §636(b)(1)(A) and cases referred under 28 U.S.C. §636(b)(1)(B). For example, dispositive motions such as motions to dismiss and motions for summary judgment would be referred in cases under a “B” referral but not in cases under an “A” referral. Motions related to discovery, such as motions to compel, or motions for scheduling would be referred in a case under an “A” referral as well as under a “B” referral.

¹ The statute lists “motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.” [28 U.S.C. §636\(b\)\(1\)\(A\)](#).

CM/ECF referral logic can be customized by the court. For example, when CM/ECF was first installed in this court, CM/ECF automatically referred Motions in Limine to magistrate judges in “A” referral cases. Because these are trial-related motions, the logic was changed to no longer automatically show referral for Motions in Limine in “A” referral cases.

CM/ECF logic is not accurate for all motions in all cases. Because CM/ECF does not understand all court operations and cannot correctly categorize every motion, CM/ECF has Utility Events which permit modification of referrals which are made by the CM/ECF logic.

Summary of CM/ECF Logic and Local Practices. The following is a list of the motions CM/ECF in the District of Utah will refer in “A” referral cases and in “B” referral cases. The list of the motions commonly referred in “A” referral cases also denotes those that may be *automatically unreferred* by the magistrate judge and those which are *often unreferred* after consultation between the magistrate judge and the district judge. Generally matters which are “trial-related” are decided by the district judge in “A” referral cases.

Motions Referred by CM ECF Logic

“A” Referral Cases	“B” Referral Cases
Properly Referred	
<p> Motion for Scheduling Conference Motion to Add Parties** Motion to Unseal Motion to Substitute Party Motion for Service of Process Motion for More Definite Statement Motion to Compel Motion for Sanctions (discovery) Motion to Enforce Discovery Order Motion to Appoint Counsel <i>If not pertaining to trial or dispositive motion:</i> Motion for Extension of Time Motion to Continue Motion to Strike Motion to Amend Complaint** ** these motions can potentially be dispositive and consultation may be needed </p>	<p> <i>All “A” Referral Case Motion Types plus these and related motions:</i> Motion to Dismiss Motion for Judgment on the Pleadings Motion for Summary Judgment </p>
Automatically unreferred by Mag. J.	
<p> Motion to Consolidate Motion under Rule 56(f) Motion to Amend Judgment Motion for Markman Hearing Motion to Enforce Settlement Motion to Certify Class Motion to Change Venue Motion to Bifurcate Trial Motion in Limine <i>If pertaining to trial or dispositive motion close to trial or motion hearing:</i> Motion for Extension of Time Motion to Continue Motion to Strike Motion to Amend Complaint </p>	
District Judge and Mag. J. consultation needed	
<p> Motion to Remand to State Court, Agency Motion for Joinder Motion to Sever Motion to Stay Motion for ADR Motion to Compel Arbitration Motion to Strike expert or expert report Motion for Daubert hearing Motion to Withdraw* Motion to Disqualify Counsel* *(if close to trial or while dispositive motion is pending on “A” Referral case) </p>	

Sample “A” Referral Docket Text

Docket Flag:

(b)(1)(A),MAG,LC2,OPEN_MJ

Email All Attys

Email All Attys and Secondary Emails

US District Court Electronic Case Filing System
District of Utah (Central)
CIVIL DOCKET FOR CASE #: 2:15-cv-00094-JNP-DBP
Internal Use Only

Mrs. Fields Franchising v. MFGPC
Assigned to: Judge Jill N. Parrish
Referred to: Magistrate Judge Dustin B. Pead
Demand: \$75,000
Case in other court: 10th Circuit, 16-04144
Tenth, 17-04045
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 02/10/2015
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

(b)(1)(A),MAG,LC2,OPEN_MJ

Email All Attys

Email All Attys and Secondary Emails

Referral Docket Text:

04/17/2018	<u>9</u>	DOCKET TEXT ORDER REFERRING CASE to Magistrate Judge Dustin B. Pead under 28:636 (b)(1)(A), Magistrate to hear and determine all nondispositive pretrial matters. So ordered by Judge David Nuffer on 4/17/18 (docket text only - no attached document) (alt) (Entered: 04/17/2018)
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Unreferral Docket Text:

04/20/2018	<u>18</u>	Motions No Longer Referred: <u>14</u> MOTION for Discovery will be addressed by the District Court. (jag) (Entered: 04/20/2018)
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Nondispositive v. Dispositive Motions

Whether a motion is “nondispositive” or “dispositive” under Federal Rule of Civil Procedure 72 implicates a relatively large body of case law interpreting 28 U.S.C. § 636. The table below reflects the common practice you should expect to see in the Southern Region of Utah’s Central Division, though it is subject to change based on any change in Tenth Circuit law.

“Nondispositive” motions handled by the magistrate judge

- Motion for scheduling conference
- Motion to seal or unseal
- Motion to substitute a party
- Motion for service of process
- Motion for more definite statement
- Motion to compel
- Motion for sanctions (discovery)
- Motion to enforce discovery order
- Motion to appoint counsel
- Motion for extension of time or continuance (unless related to trial or dispositive motion)
- Motion to strike impertinent or scandalous material

Dispositive motions handled by the district judge in a case referred under 28 U.S.C. § 636(b)(1)(A).¹

- Motion to dismiss
- Motion to remand to state court or agency
- Motion for judgment on the pleadings
- Motion for summary judgment
- Motion under Rule 56(f)
- Motion to consolidate
- Motion to amend judgment
- Motion for Markman Hearing
- Motion to enforce settlement
- Motion to certify a class
- Motion to change venue
- Motion to bifurcate trial
- Motion for extension of time or continuance related to trial or dispositive motion

¹ In a case referred pursuant to 28 U.S.C. 636(b)(1)(B) the magistrate judge will handle all motions, including dispositive motions, until trial begins or sometime shortly before trial.

Motions evaluated on a case-by-case basis

- Motion for joinder
- Motion to sever
- Motion to stay
- Motion for ADR
- Motion to amend complaint
- Motion to compel arbitration
- Motion for sanctions (contempt or Rule 11)
- Motion to withdraw
- Motion to disqualify counsel
- Motion *in limine*
- *Daubert* motions

As the case gets closer to trial, the district judge is more likely to address these motions. As a practical matter, motions *in limine* and *Daubert* motions are almost always decided by the district judge because the district judge is responsible for enforcing the order at trial.

Sample “B” Referral Docket Text

Docket Flag:

(b)(1)(B),MAG,LC1,PROSE	
Email All Attys	
Email All Attys and Secondary Emails	
US District Court Electronic Case Filing System	
District of Utah (Southern Region)	
CIVIL DOCKET FOR CASE #: 4:18-cv-00001-DN-DBP	
Internal Use Only	
Nadal et al v. United States of America Assigned to: Judge David Nuffer Referred to: Magistrate Judge Dustin B. Pead Cause: 28:2201 Declaratory Judgment	Date Filed: 03/01/2018 Jury Demand: None Nature of Suit: 890 Other Statutory Actions Jurisdiction: Federal Question
(b)(1)(B),MAG,LC1,PROSE	
Email All Attys	
Email All Attys and Secondary Emails	

Referral Docket Text:

03/05/2018	3	DOCKET TEXT ORDER REFERRING CASE to Magistrate Judge Dustin B. Pead under 28:636 (b)(1)(B), Magistrate to handle case up to and including R&R on all dispositive matters. So ordered by Judge David Nuffer on 3/5/18 (docket text only - no attached document) (alt) (Entered: 03/05/2018)
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UNITED STATES DISTRICT COURT DISTRICT OF UTAH

PRIMER FOR PARTIES AND ATTORNEYS PARTICIPATING IN THE DISTRICT OF UTAH'S MEDIATION PROGRAM

As a prerequisite to participating in a mediation conference, the Court requests that attorneys review this primer and discuss it with their clients. It is designed to familiarize the parties with the process and to review what they should do to prepare for it.

MECHANICS AND PROCEDURES

WHAT IS MEDIATION? Mediation is a private, voluntary process in which an impartial third person, the mediator who is appointed by the Court, assists the parties to settle their dispute. Mediators have no authority to rule on issues or determine a settlement. Their function is to facilitate a productive exchange of issues and views with the goal of reaching settlement. An effective mediator acts as a settlement catalyst by asking questions, defining the issues, encouraging communication, and assisting the parties to propose and evaluate alternative settlement proposals or solutions. In a successful mediation, all parties participate in forging a settlement agreement. In essence, the parties -- rather than a judge or jury -- are in charge and control the results.

DO WE GO TO COURT? Mediation conferences are held at the U.S. Courthouse, but no judge is present. The mediator opens the conference, then provides each party -- or party's attorney -- time to present its position with a statement of relevant facts and points of law. Because mediation is an assisted negotiation and not a trial, opening statements are addressed to the other party. After the opening session, each party is assigned a private room in which to meet to caucus. During these caucuses, the mediator typically circulates among the parties, meeting separately with each one in an attempt to facilitate settlement. If the parties reach agreement, they reconvene and, with the assistance of the mediator, discuss the details of the agreement. If the parties cannot reach a settlement, they can agree to (i) continue to work on a settlement agreement, (ii) schedule another mediation conference after exploring additional options, or (iii) return the dispute to litigation.

ATTENDING THE CONFERENCE

WHO IS REQUIRED TO ATTEND AND FOR HOW LONG? Under the Court's program, all parties and their attorneys are required to participate in the entire mediation conference. A typical mediation conference will run anywhere from four to eight hours. Parties must remain at the mediation conference until it is completed. Moreover, the Court expects all parties and their attorneys to participate in the process in good faith. Achieving success depends on the parties' willingness to engage in settlement negotiations in a spirit of cooperation, open-mindedness, and flexibility.

SHOULD SOMEONE WITH AUTHORITY TO SETTLE BE PRESENT? The Court's program requires that every party participating in the mediation conference must have present a representative who has the authority to approve any settlement agreement that is reached. For the defendant, settlement authority means a representative who is authorized to make an offer, financial or other, to the plaintiff. Settlement authority for the plaintiff means a representative who is authorized to accept an offer, financial or other, from the defendant.

PREPARING FOR THE CONFERENCE

DO WE NEED TO PREPARE ANYTHING IN WRITING? Under the Court's program, each party is required to provide the mediator with a written pre-conference memorandum at least ten days before the mediation conference. The memorandum should (i) assess the party's position, including strengths and weaknesses; (ii) summarize the relevant facts and evidence; (iii) list the party's needs and interests by priority; and (iv) describe and assess some desirable outcomes that could resolve the dispute. These memoranda need not be exchanged between the parties unless the mediator so requires. In addition, some court-appointed mediators may ask you to draft your memorandum according to their own format. If you have any questions, ask the mediator about the information the mediator needs you to provide.

HOW SHOULD WE EVALUATE OUR POSITION? Each party, ideally with the assistance of its attorney, should carefully review and realistically assess the relative strengths and weaknesses of its case. Based on this assessment, each party should make a preliminary determination of how flexible it can be in forging a settlement agreement. Each parties should also evaluate what resources they possess and/or need to accomplish a desirable outcome to the dispute. Where the dispute involves damages, each party should specify and calculate in advance what those damages are. When a party asks for time to return to the office to review financial statements, prepare spreadsheets, or otherwise regroup, the momentum of the process is lost. The length of a mediation conference frequently is inversely proportional to the amount of time the parties have spent preparing for it. Moreover, where one party is well prepared but the other poorly prepared, the mediation process is inappropriately drawn out and, in some cases, stifled. Parties and their attorneys should bear in mind that preparing for a mediation conference is as important as preparing to appear before a judge.

COURT-APPOINTED MEDIATORS

WHO ARE THE COURT-APPOINTED MEDIATORS? All members of the Court's ADR Panel are highly experienced and qualified attorneys who have agreed to serve as mediators in the Court's program at a reduced cost or voluntary basis. Because the time they devote to serve as mediators is valuable, the Court asks that all parties and their attorneys make every effort to be cooperative throughout the mediation process and to take the time to carefully prepare for the mediation conference.

WHO PAYS THE MEDIATORS? The court authorizes mediators to collect fees for their services at an hourly rate set by the mediator. The parties should discuss payment arrangements with the mediator before the mediation conference. Unless the parties agree otherwise, the compensation fee for the mediator is split evenly between the parties. Parties who are unable to pay their portion of the mediator's fee may motion the court to waive their portion of the fee.

QUESTIONS OR ADDITIONAL INFORMATION

If you have questions about the mediation process or would like more information about it, please call Elizabeth Toscano at 801/524-6196.

ATTY NAME & BAR NO
Attorney for [PLAINTIFF/DEFENDANT]
ADDRESS
PHONE NO.

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH - [CENTRAL/NORTHERN] DIVISION**

[PLAINTIFF]	:	
	:	
Plaintiff,	:	
	:	MOTION TO REFER CASE TO ADR
vs.	:	FOR [MEDIATION/ARBITRATION]
	:	
	:	Case No. [CASE NO.]
	:	
[DEFENDANT]	:	
	:	
Defendant.	:	
	:	

The [PLAINTIFF/DEFENDANT], by and through counsel, hereby move the Court to refer the above-captioned matter to the court-annexed Alternative Dispute Resolution Program for [MEDIATION/ARBITRATION], pursuant to DUCivR 16-2 and the Court's ADR Plan.

DATED this _____ of [MONTH], [YEAR].

By _____
[ATTORNEY]
Attorney for [PLAINTIFF/DEFENDANT]

Brent O. Hatch (5715)
Shaunda L. McNeill (14468)
Hatch, James & Dodge, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
Email: bhatch@hjdllaw.com
smcneill@hjdllaw.com

Attorneys for Red Star Transportation Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CRANNEY CORP,
a Utah corporation,
Plaintiff,

vs.

RED STAR TRANSPORTATION INC.,
a Utah corporation,

Defendant.

**JOINT MOTION TO REFER CASE TO
ADR FOR MEDIATION**

Case No.: 2:15-cv-00182

Judge Bruce Jenkins

Plaintiff and Defendant, by and through counsel, hereby move the Court to refer the above-captioned matter to the court-annexed Alternative Dispute Resolution Program for mediation, pursuant to DUCivR 16-2 and the Court's ADR Plan.

DATED this 6th day of July, 2015.

TECHLAW VENTURES, PLLC

By: /s/ Benjamin D. Stanley

Benjamin D. Stanley
Preston C. Regehr

Attorneys for Plaintiff,
CRANNEY CORP

*(Signature added with written permission
of Benjamin D. Stanley.)*

HATCH, JAMES & DODGE, P.C.

By: /s/ Shaunda L. McNeill

Brent O. Hatch
Shaunda L. McNeill


Attorneys for Defendant,
RED STAR TRANSPORTATION INC.

	:	
[PLAINTIFF]	:	
	:	
Plaintiff,	:	REFERRAL TO ADR PROGRAM
	:	FOR [MEDIATION/ARBITRATION]
vs.	:	
	:	Case No. [CASE #]
[DEFENDANT],	:	
	:	
Defendant.	:	
	:	

Further proceedings in this matter will be governed by the provisions of DUCivR 16-2 and the Court's ADR Plan.

By _____
[JUDGE]
United States [DISTRICT/MAGISTRATE] Judge

Mediation Referral Docket Text Order

01/17/2018	 121	ORDER REFERRING CASE to Magistrate Judge Dustin B. Pead under 28:636 (b)(1) for Settlement. Magistrate to conduct a settlement conference by the end of March 2018. No attached document. Signed by Judge Jill N. Parrish on 1/17/18. (ss) (Entered: 01/17/2018)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED SECURITY FINANCIAL
CORPORATION,

Plaintiff,

v.

FIRST MARINER BANK, et al.,

Defendants.

AMENDED MEDIATION ORDER

Case No. 2:14-cv-00066-JNP-EJF

District Judge Jill N. Parrish

Magistrate Judge Evelyn J Furse

Mediator: Magistrate Judge Dustin B. Pead

Pursuant to this matter being referred to the undersigned for settlement (ECF No. 121), this case is hereby scheduled for a Settlement Conference on **Thursday, March 29, 2018, from 1:30 p.m. to 5:00 p.m.** The parties will convene in Courtroom 7.100 at the U. S. District Courthouse located at 351 South West Temple, Salt Lake City, Utah.

IT IS HEREBY ORDERED:

Participation of Parties: The litigants are required to be personally present along with counsel if so represented. **Counsel is required to have full and final settlement authority. A litigant with complete settlement authority must be physically present and participate in the settlement conference for the entire time period.**

Pre-Mediation Conference and Joint Submission to Mediator: At least one attorney representing each party must meet and confer regarding the topics discussed below. On or before **March 2, 2018**, counsel must jointly submit a document containing the following:

1. Identification of discrete issues which, if resolved, would aid in the settlement of the case. This must include identification of any pending motion(s) that either party feels

precludes meaningful negotiation.

2. A live settlement demand from the party asserting any claim (whether in a complaint, cross-claim, or counterclaim). This demand will be used as the opening demand to begin this mediation. The number may be presented as an aggregate to settle all of the party's claims or it may list the demand for each individual claim. **This demand shall be treated as a confidential mediation communication.**
3. Affirmation that all counsel has read this mediation order and will comply with its terms, particularly the requirement that all persons who may withhold settlement authority must be physically present during the entire mediation.
4. An honest estimate of the likelihood of settling the matter. The parties are expected to make good-faith efforts to compromise. If the parties believe mediation is impossible for any reason, they should so indicate.

This statement must be delivered directly to the Magistrate Judge's chambers or emailed to:

utdecf_pead@utd.uscourts.gov. The joint submission will not be shared with the District Court.

If the joint submission is not provided by the deadline, the mediation will be stricken.

Confidential Settlement Statement: On or before **March 15, 2018**, each party shall separately lodge with the Magistrate Judge a **confidential settlement statement** including:

1. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;
2. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands;
3. An estimate of the cost and time to be expended for further discovery, pretrial and trial; and
4. A certification that counsel engaged in a candid discussion with their respective client(s) about the risks of trial and the risk of negative outcomes at trial.

The **confidential settlement statement** must be delivered directly to the Magistrate Judge's chambers or emailed to chambers at: utdecf_pead@utd.uscourts.gov. Copies of the confidential settlement statement **shall NOT be filed with the Clerk of the Court, nor served**

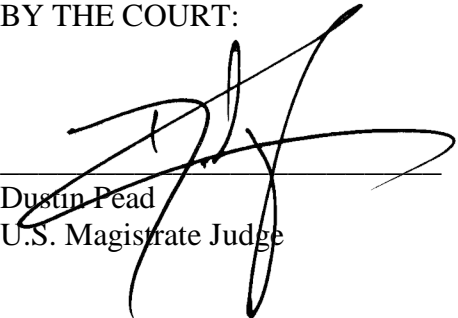
upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these confidential settlement statements.

Confidentiality: No report of proceedings, including any statement made by a party, attorney, or other participants in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission unless otherwise discoverable. Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the settlement conference except agreements placed on the record in open court or provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement process, except as required by law.

For questions related to the settlement conference, counsel may contact Judge Pead's Chambers at (801) 524-6155.

DATED this 30th day of January 2018.

BY THE COURT:



Dustin Pead
U.S. Magistrate Judge