

## **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 the 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 exludes the following items: face sheet, table of contents, table of authorities, signature block, certificate of services, and exhibits.

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

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

**(b) Response and Reply Memoranda.**

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

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

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

(2) Length of Response and Reply Memoranda.

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

Civ. P. 12(b), 12(c), and 65 must not exceed 6,500 words, or in the alternative, twenty-five (25) pages. 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 page limit, then the party must certify compliance with the word-count limit. These limitations exclude the following items: face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits. No additional memoranda will be considered without leave of court.

(B) Length of Response 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 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 limitations. Absent such showing, such requests will not be approved. A lengthy motion or memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Motions or memoranda exceeding page 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 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 that require the motions be consolidated into a single motion.

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

(3) Statement of Undisputed Material Facts: 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 pages(s), for a total of at least nine (9) <sup>7</sup>.

**(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<sup>8</sup>. Any factual citations must reference the appropriate party's Appendix of Evidence, rather than either party's factual statements or responses. The nonmoving 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\(e\)](#).

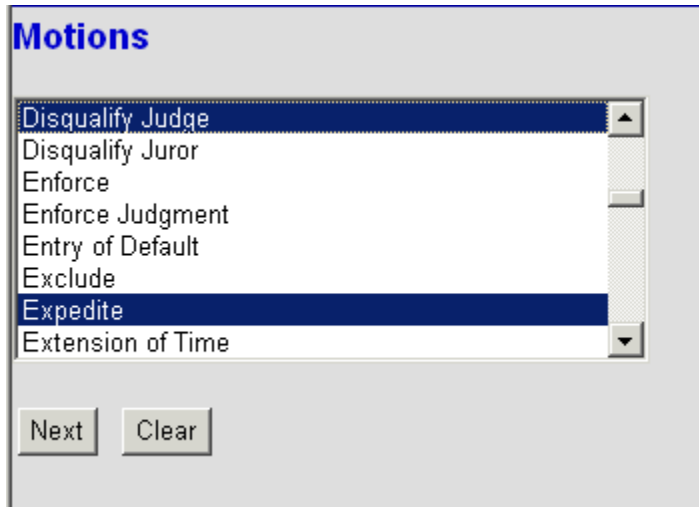
(2) Filing times and length of memoranda are governed by [DUCivR 7-1](#).

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

## Expedited Treatment of Motions

If expedited treatment of a motion is desired, counsel should secure consent of counsel to an expedited schedule or move for an expedited schedule, submitting a proposed order for expedited treatment. Orders for Expedited Treatment of Motion [Sample 1](#) [Sample 2](#)

In CM/ECF, be sure to specify that the motion seeks to Expedite, as well as seeks the relief sought. (Control-click to select all applicable types of relief.)



The image shows a screenshot of a software interface titled "Motions". It features a dropdown menu with the following options: "Disqualify Judge", "Disqualify Juror", "Enforce", "Enforce Judgment", "Entry of Default", "Exclude", "Expedite", and "Extension of Time". The "Expedite" option is currently selected and highlighted in blue. Below the dropdown menu are two buttons: "Next" and "Clear".



## **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 77-2 ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK OF COURT**

### **(a) Orders and Judgments.**

The clerk of court is authorized to grant and enter the following orders and judgments without direction by the court:

- (1) orders specifically appointing a person to serve process under Fed. R. Civ. P. 4(c);
- (2) orders 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;
- (3) orders for the payment of money on consent of all parties interested therein;
- (4) if the time originally prescribed has not expired, orders to which all parties stipulate in civil actions extending once for not more than thirty (30) days the time within which to answer or otherwise plead, to answer interrogatories, to respond to requests for production of documents, to respond to requests for admission, or to respond to motions;
- (5) orders to which all parties stipulate dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66;
- (6) entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1); and
- (7) any other orders which, under Fed. R. Civ. P. 77(c), do not require leave or order of the court.

Any proposed order submitted to the clerk under this rule must be signed by the party or attorney submitting it and will be subject to the provisions of Fed. R. Civ. P. 11. In addition, with the exception of proposed orders for extensions of time, all other proposed orders under this rule are subject to the requirements of [DUCivR 54-1](#). Any proposed order submitted to the clerk for an extension of time under subsections (2) or (4) of section (a) of this rule must state (i) the date when the time for the act sought to be extended is due; (ii) the specific date to which the allowable time for the act is to be extended; and (iii) that the time originally prescribed has not expired. Second and successive requests for extensions of time must be by motion and proposed order to the court and must include a statement of the unusual or exceptional circumstances that warrant the request for an additional extension. In addition to the requirements (i) through (iii), above, such motions and proposed orders must specify the previous extensions granted.

### **(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.

## Utah Standards of Professionalism and Civility Excerpts

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.
6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.
13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer's unavailability.
14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.
15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.
16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.



## Telephone Conference Instructions

utmj Nuffer to:  
Sent by: Anndrea Sullivan-Bowers

08/26/2016 10:28 AM

Counsel,

Judge Nuffer has set a telephone conference for [DAY OF THE WEEK], [DATE], TIME (MST/MDT), to discuss [ISSUE/MOTION].

Please plan to participate on a land line rather than a cell phone and to avoid the use of a speaker phone. During the call, announce your name each time you speak and pause regularly during any statements to allow the judge to maintain control.

For participants, the conference instructions are as follows:

1. **Dial 877-402-9757.**
2. Enter the **Access Code 9839573**, followed by the # key.
3. To join as a participant, press # key. You will be placed on hold until the host (Judge Nuffer) activates the call.
4. You will be asked to enter the **Participant Security Code [DIVISION-YEAR-LAST 3 DIGITS OF CASE NUMBER, i.e. 21010]**, followed by the # key. The system will confirm the number entered and then ask to either accept (press 1) or re-enter (press 2). All participants must enter the security code, followed by the # key and accept (press 1), to be entered into the meeting. The security code needs to be entered only once unless it is entered incorrectly the first time.

If you have any questions, please call us at 801-524-6150.



Anndrea Bowers  
Case Manager  
Hon. David Nuffer's Chambers  
801-524-6150  
anndrea.sullivan-bowers@utd.uscourts.gov  
dj.nuffer@utd.uscourts.gov

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

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,

Plaintiff,

v.

,

Defendant.

Case No.

District Judge David Nuffer

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Signed January 22, 2011.

BY THE COURT

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District Judge David Nuffer

## Instructions to counsel preparing an order for summary judgment

[Case Name] Case No. [\_\_\_\_\_] – Motion[s] [\_\_\_\_\_]

Prepare a Memorandum Decision in Microsoft Word format with the statement of undisputed material facts as specified in the hearing and conclusions of law as announced at the end of the hearing. Consider as examples docket no. 397, 2:13-cv-00729, filed August 4, 2014; docket no. 60, 2:11-cv-00971, filed August 7, 2014; docket no. 62, 1:12-cv-00119, filed February 2, 2015; and docket no. 36, 2:13-cv-00865, filed March 26, 2015. Consider using the Order template found at <http://www.utd.uscourts.gov/judges/nuffer.html#Orders>. The proper template is <http://www.utd.uscourts.gov/forms/order3.dotm>.

**Undisputed facts** should be as used at the hearing. The **analysis** should discuss the applicable law for each issue presented in turn, reference the factual support from the undisputed facts, and be written as the decision of the court. Any reference to a hearing transcript must be footnote referenced to the page and line of the transcript in this format:

Transcript [date if more than one day hearing] [page] [line]

Transcript 342:12–14.

Transcript 3/21/15 12:15–25.

- Use headings and subheadings. The recommended template includes these styles.
- Case citations should be footnoted rather than in the text. String citations are discouraged. Discuss a case or don't cite it.
- If the document is 10 pages or longer, generate a Table of Contents.

The party preparing the order should email the Word document to opposing counsel and the court at [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov), and file a PDF version under the event “Notice of Filing.”

Opposing counsel should open the Word document and turn on Track Changes. Edit the order as to form, not substance. Email the Word document to the drafter and the court at [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov), and file a PDF version under the event “Notice of Filing.”

Draft due \_\_\_\_/\_\_\_\_/\_\_\_\_

Response due \_\_\_\_/\_\_\_\_/\_\_\_\_

Meet and confer \_\_\_\_/\_\_\_\_/\_\_\_\_

Submit drafter's version with accepted changes \_\_\_\_/\_\_\_\_/\_\_\_\_. Email the Word document version to the court at [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov), and file a PDF version under the event “Notice of Filing” in CM/ECF.

Opposing party submits redline with remaining requested changes \_\_\_\_/\_\_\_\_/\_\_\_\_. Email the Word document version to the court at [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov), and file a PDF version under the event “Notice of Filing” in CM/ECF.

See example document attached.

If you have a paper copy of this document, download a copy with working links at <http://www.utd.uscourts.gov/rad>

## Suggestions for Creating a Really Accessible Document

These are *suggestions*—and should be relatively easy to implement. After learned, they should not add significant time or expense to any project. Start with one, move to another. Tips are listed in the sequence of document preparation and filing.

### 1. Finished PDF documents filed in CM/ECF should be entirely text-based to facilitate searching, copying, and highlighting.

Because we read almost all submissions on computer or iPad, we really appreciate it if they are entirely text-based PDF documents. A [text based PDF](#) can be word-searched, highlighted as read, and copied into an order. Computer created documents (such as motions with memoranda) will be text based if output from the computer to PDF format, but all scanned documents should have text recognition through Optical Character Recognition (OCR) before submission to the court. [Recognize Text in Adobe Acrobat](#).

### 2. Begin with an outline that becomes a Table of Contents.

An outline creates organization but it also makes navigation tools available in Microsoft Word while you are drafting, and can automate a table of contents that has hyperlinks to locations in the document. The outline feature is built in to all word processors, and the table of contents will survive the conversion to PDF format. [Outline in Word](#). [Table of Contents in Word 2010](#).

### 3. Create a List of Exhibits

An exhibit list included with the memorandum (as a separate attachment) helps locate exhibits. The importance of exhibits is clarified if the exhibit list includes pages on which references to exhibits are made.

INDEX		
Exhibit		Page
Exhibit "1"	Declaration of Stephen Batzer Ph.D., P.E.	4-14, 16-18, 32, 34
Exhibit "2"	Novatek Drawing No. NFP-NP-0199 (release date 7/8/2010), Ex. 9 David Hall deposition.	4, 6-14, 16, 17
Exhibit "3"	Novatek Drawing No. NFP-NP-0211 (release date 8/17/2010), Ex. 19 David Hall deposition.	4, 6-14, 16, 17
Exhibit "4"	Exhibit A to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13
Exhibit "5"	Exhibit B to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13
Exhibit "6"	Exhibit C to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13

### 4. Use Photos and Diagrams

Graphics clarify the written discussion. This is particularly true if tangible objects are at issue, such as in patent cases.

### 5. Use Permissible Hyperlinks

Hyperlinks may be internal to the document, such as table of contents; to the record, to other documents already filed in the case; and to research resources. See [DUCivR 7-5](#). See [Attorney Guide to Hyperlinking at http://federalcourthyperlinking.org](#). [WestInsertLinks](#), part of [West BriefTools](#) or [Link to Cites in Lexis for Microsoft Office](#) automate research links. A [LinkBuilder Add-in for Microsoft Word](#) is also available to automate creation of links to documents already in the record. It is also possible to create links to exhibits filed simultaneously, but this can be complicated and not worth the effort.

### 6. Attach deposition excerpts and other exhibits in text-based PDF format

If deposition excerpts and other exhibits are in text-based PDF format (see point no. 1) the document is easier to search and annotate and it is easier to copy text. Deposition transcript attachments should be created by output to PDF format from a word processing or text file provided by the reporter. Use full page deposition transcripts, not mini four pages-to-a-sheet transcripts. If the deposition excerpts or exhibits are scanned, Optical Character Recognition should be run to recognize text. [Recognize Text in Acrobat X](#).

### 7. Attach opinions in single column format (text based)

West and Lexis allow download of cases in single-column format, which is easier to read on an iPad or computer than the traditional dual column format. Make sure the cases you attach are text based PDF documents, which Lexis and Westlaw also allow you to download – or you may convert to PDF from a

word processing version. *It should never be necessary to scan an opinion for attachment to a brief.* If you use research hyperlinks (see point no. 5 above) no opinion attachments may be needed.

**8. Convert the document to PDF in a way that preserves hyperlinks**

It is a shame to put a table of contents and research links in your Word document and then lose them because you Print to PDF, which may not not save links. Save As PDF in Word 2010 and later, or the Acrobat Create PDF Ribbon in Word 2007 and later will preserve links. After you convert to PDF, verify that the document links still work. [Preserving Hyperlinks in PDF Conversion.](#)

**9. Change the properties of the PDF document so that the Initial View will show Bookmarks and the Page at the same time.**

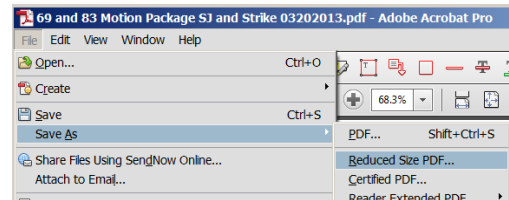
Most PDF creation programs have the ability to [force the PDF document to open with the Bookmarks Panel showing.](#) In Adobe Acrobat Standard and Pro, this is found on the File menu, Properties item, Initial View tab, Bookmarks Panel and Page.

**10. Consider additional manual changes.**

It is possible and appropriate to add internal links manually, and to add additional bookmarks. If you do not have access to the West and Lexis tools to create links to research links automatically, links may be created manually by using Word’s tools. [Create, format or delete a hyperlink in MS Word 2010.](#) [Attorney Guide to Hyperlinking.](#) [Adding Bookmarks in Adobe Acrobat.](#)

**11. Save As Reduced Size PDF**

As a last step before distribution of any PDF document, reduce its size by using [Save As Reduced Size PDF.](#) You may accomplish a 50% or more size reduction.



**12. Attach a proposed order in PDF format – and email in word processing format to chambers.**

“Proposed orders . . . shall be (i) prepared as word processing documents; (ii) saved in WordPerfect or Word format, and (iii) transmitted to the assigned judge via email. . . .

An additional copy . . . shall be saved as a PDF file and filed electronically as an attachment to the motion . . . .” [Admin E-Filing Procedures II. G. 1.](#) The draft order makes clear what you want.

**13. File attachments individually, with full descriptions**

When filing in CM/ECF, take advantage of the ability to name your exhibits specifically rather than using generic names. This helps chambers identify and locate your exhibits and provides a cross-check to the index you included in the motion. (See point no. 3 above.) Cover pages for exhibits really are not of much help. Instead, consider a text box on the first page of the exhibit that labels the exhibit with its number and description. Don’t group exhibits in one attachment.

Document Number: <a href="#">36</a>			
		32 pages	190 kb
Attachment	Description		
<a href="#">1</a>	Appendix Exhibits	1 page	9 kb
<a href="#">2</a>	Exhibit "A"	18 pages	339 kb
<a href="#">3</a>	Exhibit "B"	14 pages	319 kb
<a href="#">4</a>	Exhibit "C"	9 pages	204 kb
<a href="#">5</a>	Exhibit "D"	5 pages	111 kb
<a href="#">6</a>	Exhibit "E"	3 pages	18 kb
<a href="#">7</a>	Exhibit "F"	4 pages	35 kb

Document Number: <a href="#">19</a>			
		6 pages	17 kb
Attachment	Description		
<a href="#">1</a>	Exhibit 1 - Lawsuits for Asserted Patents	26 pages	97 kb
<a href="#">2</a>	Exhibit 2 - Complaint AT&T, Verizon and EarthLink case	39 pages	1.1 mb
<a href="#">3</a>	Exhibit 3 - Order Severing Claims	5 pages	52 kb