

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

**(a) Governing Rules.**

When a party seeks judicial review of an administrative agency's decision under an arbitrary and capricious or substantial evidence standard of review, in civil actions other than review of Social Security decisions under 42 U.S.C. § 405(g), the Federal Rules of Civil Procedure apply unless other law or these rules require otherwise.<sup>1</sup> Except for the formatting requirements in section 7-4(d), review of Social Security decisions is governed by the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

**1(b) Initial Filings.**

(1) A complaint must include:

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

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

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

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

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

(B) a short and plain statement—

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<sup>1</sup> Advisory Committee Note: This provision is intended to clarify that the Federal Rules of Civil Procedure govern other matters that arise in litigation challenging agency decisions, such as amendments to complaints, motions to intervene, motions for injunctive relief, and other matters not otherwise precluded by other law or rules.

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

~~(2) If the action seeks review of a Social Security Administration Commissioner's decision, the agency must file the administrative record along with the short and plain statement.~~

- (3) The following responsive pleadings are not allowed:
  - (A) an answer;
  - (B) a motion for judgment on the pleadings;
  - (C) a motion for summary judgment; or
  - (D) a motion to affirm or reverse the decision.
- (4) If the agency files a motion to dismiss and the court denies that motion, the agency must comply with section 7-4(b)(~~12~~)(B) within the time prescribed by Fed. R. Civ. P. 12(a)(4)(A).

**2-(c) Scheduling Order.**

- (1) In lieu of an Attorney Planning Meeting Report under Fed. R. Civ. P. 26(f), and within 14 days after the agency files its short and plain statement, the parties must submit a proposed scheduling order that contains:
  - (A) a brief statement of—
    - (i) the claimed errors in the agency's decision; and
    - (ii) the reasons the agency claims its decision was not arbitrary and capricious or was supported by substantial evidence;
  - (B) dates by which the following will be filed—
    - (i) the indexed administrative record, if one has not already been filed;
    - (ii) objections to the administrative record and responses;

- (iii) any other motions;
  - (iv) the Opening Brief, which must be filed using the CM/ECF event, “Motion for Review of Agency Action”;
  - (v) the Answer Brief, which must be filed using the CM/ECF event, “Memorandum in Opposition to Motion” and linked to the “Motion for Review of Agency Action”; and
  - (vi) a Reply Brief, which is limited to addressing only those issues raised in the Answer Brief, and which must be filed using the CM/ECF event, “Reply Memorandum/Reply to Response to Motion” and linked to the “Motion for Review of Agency Action.”<sup>2</sup>
- (2) The Scheduling Order will govern the filing deadlines for the parties’ respective briefs unless the court orders otherwise.

**3-(d) Briefs Requirements.**

- (1) Fed. R. App. P. 28(a)(2), (3), (5)-(10) govern the Opening Brief;
- (2) Fed. R. App. P. 28(b) governs the Answer Brief, except that it need not follow the requirements of Fed. R. App. P. 28(a)(1) or (4);
- (3) Fed. R. App. P. 28(c) governs the Reply Brief;
- (4) The following page and word limits apply, unless the court orders otherwise on showing of good cause:
  - (A) in a case seeking review of a Social Security Administration Commissioner’s decision, Opening and Answer Briefs must not

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

exceed 7,750 words, and a Reply Brief must not exceed 3,875 words;

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

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

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

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

## **DUCivR 7-6 AMICUS CURIAE PARTICIPATION**

### **(a) Participation.**

An attorney or person, entity, or the government through an attorney may seek leave of the court to file an amicus curiae brief in a case. Those seeking leave must file a motion consistent with section 7-6(b).

### **(b) Motion for Leave to File a Memorandum.**

(1) The motion must include the following:

(A) the amicus's interest in the litigation;

(B) the usefulness of the memorandum to the disposition of the case;  
and

(C) whether the parties consent to the filing of the memorandum.

(2) The motion must be accompanied by:

(A) a proposed order granting the motion; and

(B) the proposed memorandum.

(3) Any party may file a response to the motion, without responding to the substance of the proposed memorandum, within 7 days after service of the motion. Further briefing on the motion for leave is not permitted.

(4) A party who has been granted leave to file must subsequently file the memorandum with the court within 3 days of the order.

### **(c) Memorandum Form and Length.**

(1) Form. A memorandum must comply with the formatting requirements of DUCivR 10-1.

(2) Length. Except as the court authorizes, a memorandum may be no more than 25 pages or 7,750 words. The court's order allowing a party's overlength motion or response does not affect the length of an amicus memorandum.

**(d) Memorandum Contents.**

(1) The memorandum must include the following sections:

- (A) if the amicus curiae is a nongovernmental corporate party, the disclosure statement required by Fed. R. Civ. P. 7.1(a);
- (B) a concise statement of the identity of the amicus curiae and its interest in the case;
- (C) unless the amicus curiae is one listed in the first sentence of section 7-6(a), a statement that indicates whether—
  - (i) a party's counsel authored the memorandum in whole or in part;
  - (ii) a party or a party's counsel contributed money to support preparing the memorandum; and
  - (iii) a person (other than the amicus curiae, its members, or its counsel) contributed money to support preparing the memorandum and identifies each contributor;
- (D) an argument, which may be preceded by an introduction or a statement of the appropriate legal standard; and
- (E) if applicable, a word count certification under DUCivR 7-1(a)(5)(C).;

(2) The memorandum may only argue for relief a party is seeking.

**(e) Time for filing.**

- (1) Supporting the Moving Party. The amicus must file the motion for leave and amicus memorandum no later than 14 days after the moving party files their motion.
- (2) Opposing the Moving Party. The amicus must file the motion for leave and amicus memorandum no later than 7 days after the response to the moving party's motion has been filed.

(3) Modifying the Filing Deadlines. Upon a showing of good cause and no unfair prejudice to any party, the court may modify these deadlines.

**(f) Prohibiting or Striking an Amicus Memorandum.**

The court may prohibit the filing or strike any amicus memorandum if:

- (1) the memorandum would result in the judge's disqualification; or
- (2) after review, the court determines that the memorandum merely restates the arguments of a party, is not useful in the determination of the case, is an effort by a party to circumvent the length limits of the local rules, otherwise violates these Rules, or for other good cause.

**(g) Restrictions and Exceptions on Amicus Participation in the Case.**

(1) Except as the court authorizes, an amicus curiae may not:

- (A) file a reply or participate in oral argument; and
- (B) otherwise participate in the case, including discovery and appearing at evidentiary hearings or trial.

———The prohibitions in section 7-6(i)(1) do not apply to parties who have been granted the right to intervene as a party, have been appointed to represent the interest of a party, or who are otherwise granted the right to participate in the case by other statute or rule.

DUCivR 26-1 GENERAL PROVISIONS GOVERNING DISCOVERY REQUESTS AND DOCUMENTS

~~Form of Responses to Discovery Requests.~~

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

~~Form of Responses to Discovery Requests.~~

(b) (a) Filing.

(1) Not Filed. Unless the court orders otherwise ~~ordered by the court~~, counsel ~~must not file with the court~~, the following must not be filed:

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

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

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

(A)(D) a}(2); certificate of service of discovery requests or responses.

(i)(2) in Expert Disclosure. In lieu of filing expert disclosures and reports under Fed. R. Civ. P. 26(a)(2), the parties must file with the court, by the date specified in the governing scheduling order, a list of the ~~experts~~ disclosed ~~to the opposing party along with each~~ experts and the expert's subject of expertise; to allow the court to conduct a conflict check.

(2) ~~depositions or notices of taking deposition required by~~ Fed Exceptions. Subsection (a-R. Civ. P. 30(b)(1);

(3) ~~interrogatories;~~

(4) ~~requests for production, inspection or admission;~~



~~(5) answers and responses to such requests; and~~

~~(6) certificates of service for any) does not preclude filing a copy of the  
discovery materials referenced in (A) through (E).~~

~~(3) This section does not preclude the use of discovery materials identified  
above to be used at a hearing, trial, or as exhibits an exhibit to  
motions a motion, response, or memorandum reply.~~

**(b) Form.**

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

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

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

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

~~(2)~~

DUCivR 26-2 STANDARD PROTECTIVE ORDER ~~AND STAY OF DEPOSITIONS~~

(a) Applicability.

—The Standard Protective Order.

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

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

(b) Improper Discovery Objection.

~~(2) — Except as the court may otherwise order, it is improper to object to a discovery request or fail to produce Fed. R. Civ. P. Any party or person who believes that substantive rights are being impacted by application of the rule may immediately seek relief.~~

~~Motion for 26(a)(1) initial disclosures on the basis that the court has not entered a protective order.~~

**(c) Relief From the Standard Protective Order and Stay of Deposition.**

(b)

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

A party may file a motion, consistent with DUCivR 7-1, seeking relief from the Standard Protective Order.

DUCivR 29-1 ~~AGREEMENTS REGARDING EXTENSION OF~~EXTENDING DISCOVERY  
RESPONSE DEADLINES

(a) ~~An agreement between the parties extending~~ Agreement Without Court Order.

Parties may agree to extend the time to respond to ~~any form of a~~ discovery request ~~does not require~~without court approval, ~~and no motion, proposed order, or other document need be filed with the court memorializing the agreement, if unless:~~

- (1) ~~The~~the time originally prescribed to respond has ~~not~~ expired, ~~and; or~~
- (2) ~~The~~the extension ~~does not modify~~modifies or ~~interfere~~interferes with:
  - (A) a deadline established by the case scheduling order;
  - (B) a filing deadline established by the court, the Federal Rules of Civil Procedure, or these Local Rules, ~~including a deadline established by the Short Form Discovery Rule;~~
  - (C) a court-scheduled conference;
  - (D) a deadline for filing a proposed pretrial order;
  - (E) a trial date; or
  - (F) any other deadline referenced in Fed. R. Civ. P. 29(b).

(b) Court Order Required.

If the circumstances in section 29-1(a)(1) or (2) are present, the parties must obtain court approval to extend the discovery response deadline by filing a stipulated motion and proposed order.

## DUCivR 30-1 DEPOSITION OBJECTIONS AND STAYS

### (a) ~~\_\_\_\_\_ Objections during depositions~~ Timely Form Objection.

A party must object to the form of ~~the~~ deposition question ~~must specifically at~~ the time the question is posed and must identify the basis ~~for the objection.~~

~~Objections to the form, which~~ may include, ~~but are not limited to,~~ the following objections:

- ~~(1)~~ \_\_\_\_\_ ambiguous;
- ~~(2)~~ • \_\_\_\_\_, vague, or unintelligible;
- ~~(3)~~ \_\_\_\_\_ argumentative;
- ~~(4)~~ \_\_\_\_\_ compound;
- ~~(5)~~ • \_\_\_\_\_, or leading;
- ~~(6)~~ \_\_\_\_\_ mischaracterizes a witness's prior testimony;
- ~~(7)~~ • \_\_\_\_\_ mischaracterizes or the evidence;
- ~~(8)~~ \_\_\_\_\_ calls for a narrative;
- ~~(9)~~ • \_\_\_\_\_ calls for speculation;
- ~~(10)~~ \_\_\_\_\_ asked and answered;
- ~~(11)~~ • \_\_\_\_\_ lack of foundation; and
- ~~(12)~~ • \_\_\_\_\_ assumes facts not in evidence.

### (b) ~~\_\_\_\_\_ If the basis for~~ Waiver.

A party waives a form objection ~~as to form is not timely made at the time of the~~ question, unless the objection ~~is waived. complies with section 30-1(a).~~

### (c) Coaching Objection Prohibited.

Objections ~~that state more than the basis of the~~ must be concise and must not suggest answers to or coach the deponent. An attorney making a statement or objection ~~and have that has~~ the effect of coaching the ~~witness are not permitted~~ and deponent or suggesting an answer may be ~~sanctionable~~ sanctioned.

### (d) Stay of Deposition.

A motion for a protective order to stay a deposition automatically stays the deposition only if it is filed by the third business day after service of the deposition notice. The deposition is stayed until the court rules on the motion.

**DUCivR 41-1     ~~SANCTIONS: FAILURE TO NOTIFY COURT WHEN SETTLEMENT IS REACHED-DISMISSAL OR SETTLEMENT BEFORE JURY TRIALBEFORE A SCHEDULED JURY TRIAL~~**

**(a) Duty to Notify the Court.**

~~The parties must immediately notify the court about any agreement that in any case for which a trial date has been scheduled, the parties must immediately notify the court of any agreement reached by the parties which resolves eliminates the litigation as to any or all the parties the need to empanel a jury. .~~

**(b) Jury Costs.**

(1) The court may assess ~~Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, jury costs paid or incurred may be assessed against~~ an the attorney, a partyies and, their attorney or boths unless as directed by the court. the parties have complied with section DUCivR 41-1(a) by filing a notice about dismissal or settlement and informing the judge's chambers by no later than 10:00 a.m. at least 1the last -business day -before the scheduled jury trial.

(2) Jury costs will include attendance fees, per diem, mileage, and parking.  
~~No jury costs will be assessed if notice of settlement or disposition of the case is given to the jury section of the Clerk's Office at least 1 full business day prior to the scheduled trial date~~

## DUCivR 41-2 DISMISSAL FOR FAILURE TO PROSECUTE

~~The~~ At any time, the court may issue ~~at any time~~ an order to show cause requiring a party seeking affirmative relief to explain why ~~a~~the case should not be dismissed for lack of prosecution. ~~If the party does not show~~ good cause ~~is not shown~~ within the time prescribed, a district judge or a magistrate judge presiding by the order to show cause, the court consent may enter an order of dismissal. The dismissal may be with or without prejudice, as the court deems proper.



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

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

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<sup>‡</sup>~~This provision is subject to the addition of three (3) days provided by Fed. R. Civ. P 6(d).~~

## ~~DUCivR 69-1 — SUPPLEMENTAL PROCEEDINGS~~

### ~~(a) — Motion to Appear.~~

~~Any party having a final judgment on which execution may issue may make a motion to have the judgment debtor or other person in possession of, or having information relating to, property or other assets that may be subject to execution or distraint appear in court and answer concerning such property or assets. The moving party, on proper affidavit, may request that the debtor or other person be ordered to refrain from alienation or disposition of the property or assets in any way detrimental to the moving party's interest.~~

### ~~1. Hearing Before Magistrate Judge.~~

~~A motion under section 69-1(a) will be presented to a magistrate judge and the matter calendared before the magistrate judge for hearing to require the debtor or other person to be examined. In any case in which the moving party seeks a restraint of the debtor's or other person's property, the magistrate judge will make findings and a report for the district judge with an order for restraint that the district judge may issue.~~

### ~~2. Failure to Appear.~~

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

### ~~3. Fees and Expenses.~~

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

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

### (a) General Authority.

Unless otherwise directed by the court, ~~a magistrate judges are~~ judge is authorized, with or without a referral, 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, including:
  - (A) authorize the issuance of post-hold hearings to determine judgment debtor's property;
  - (B) issue writs;
  - (C) temporarily restrain a judgment ~~collection writs pursuant~~ debtor from selling, transferring, or disposing of the property or asset;
  - (D) hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution;
  - (E) issue orders directing funds—
    - (i) to be paid into the registry of the court;
    - (ii) to be paid out of the registry on the parties consent under 28 U.S.C. § 636(c) and DUCivR 72-4; and
  - (F) perform all duties specified in the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001–3308;
- (4) issue orders authorizing alternative service;

- (5) conduct initial scheduling conferences under Fed. R. Civ. P. 16, enter stipulated scheduling orders, and grant or deny stipulated motions to amend scheduling orders;
- (6) conduct all pretrial proceedings contemplated by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72 in cases assigned ~~to them~~ under ~~General Order 11-001~~ DU CivR 72-4 and 83-2; and
- (7) issue subpoenas, writs of habeas corpus ad testificandum, and other orders necessary to secure the presence of parties, witnesses, or evidence for court proceedings.

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

On an order of reference ~~and~~ under 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a), a magistrate ~~judges are~~ judge is authorized to hear and determine any procedural motion, discovery motion, or other non-dispositive motion.

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

(1) On an order of reference ~~and~~ under ~~the provisions of~~ 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b), a magistrate ~~judges are~~ judge is authorized to prepare and submit to the district judge a report containing proposed findings of fact and recommendations for disposition of motions:

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

~~(2)~~ (B) for judgment on the pleadings;

~~(3)~~ (C) for summary judgment;

~~(4)~~ (D) to dismiss;

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

~~(6)~~ (E) for default judgments; and

~~(7)(F)~~ for judicial review of an administrative agency ~~decisions~~decision, including an award or denial of a license, benefits under the Social Security Act, ~~and awards or denials of licenses or~~a similar ~~privileges~~privilege.

~~(2)~~ Magistrate judgesA magistrate judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority under ~~this section.~~DUCivR 72-2(c)(1).

### ~~3. 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.~~

### ~~4. 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.~~

**5.(d) Authority to Function as Special Master.**

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

**~~6. 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 72-4 CONSENT TO THE JURISDICTION OF THE MAGISTRATE JUDGE**

### **(a) Civil Consent Jurisdiction of Magistrate Judges.**

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

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

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

- (A) is brought by an unrepresented party;
- (B) seeks judicial review of decisions of the Commissioner of the Social Security Administration (Social Security Appeal); or
- (C) is an eligible civil case randomly assigned under DUCivR 83-2(a).

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

- (A) includes a request for immediate injunctive or similar extraordinary relief when a standalone motion for the relief accompanies the complaint or is included in the complaint;
- (B) includes a claim for relief filed under 28 U.S.C. § 2241, 28 U.S.C. § 2254, or 28 U.S.C. § 2255;
- (C) is an in rem or civil forfeiture action involving personal or real property;
- (D) is an appeal from the bankruptcy court to the district court;
- (E) includes a claim for relief brought by a relator under the False Claims Act, 31 U.S.C. §§ 3729, et seq.;
- (F) includes a claim or defense related to the adjudication of, the infringement of, or rights to, a patent;

- (G) is one in which all district judges have a conflict; or
- (H) is one that an assigned district judge has previously invested considerable time.

**(c) Notification of Availability of a Magistrate Judge.**

- (1) Notification. In every eligible civil case, the Clerk's Office will give notice to each relevant party that a magistrate judge may exercise jurisdiction by sending a copy of the Consent to the Jurisdiction of Magistrate Judge form (Consent Form).
- (2) Sending the Consent Form. For cases identified in DUCivR 72-4(b)(1), the Clerk's Office must send the Consent Form to the plaintiff when the complaint is filed and to every other relevant party when the party appears or otherwise responds. When a new party is added to a civil case after consent to a magistrate judge has been obtained, the Clerk's Office will send the Consent Form to the newly added party.
- (3) Returning the Consent Form.
  - (A) Deadline. A party has 21 days from the date the Clerk's Office sends the Consent Form to that party to return it to the Clerk's Office.
  - (B) Procedure. A party must not electronically file the Consent Form in the case. The Consent Form must be confidentially returned to the Clerk of Court, either by emailing the form in PDF format to [consents@utd.uscourts.gov](mailto:consents@utd.uscourts.gov) or by mailing it to the address provided in the form.
- (4) Filing the Form After Consent is Obtained. If each relevant party consents to the jurisdiction of a magistrate judge, the consent clerk will file the Consent Form.

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

- (1) Consent Obtained.



- (A) Case Assigned to a Magistrate Judge. In a case initially assigned to a magistrate judge in which the relevant parties consent, the Clerk's Office will assign the case to the magistrate judge as the presiding judge.
  - (B) Case Assigned to a District Judge. In a case initially assigned to a district judge, but eligible to have a magistrate judge preside after consent, in which the relevant parties consent, the Clerk's Office will assign the case to:
    - (i) the referred magistrate judge; or
    - (ii) a randomly selected magistrate judge if one has not been referred.
- (2) Consent not Obtained.
- (A) Case Assigned to a Magistrate Judge. In a case initially assigned to a magistrate judge under DUCivR 72-4(b)(1)(A) or (B) in which consent is not obtained, the Clerk's Office will randomly assign the case to a district judge and enter an automatic referral under 28 U.S.C. § 636(b)(1)(B) to the magistrate judge who was initially assigned. In all other cases initially assigned to a magistrate judge in which consent is not obtained, the Clerk's Office will enter an automatic referral under 28 U.S.C. § 636(b)(1)(A) to the magistrate judge who was initially assigned.
  - (B) Case Assigned to a District Judge. In a case initially assigned to a district judge, in which consent is not obtained, the case remains assigned to the district judge. Any existing referral to a magistrate judge is unaffected.

**(e) Confidentiality.**

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

**(f) Authority of the Magistrate Judge Pending Consent.**

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

## DUCivR 81-2 REMOVED ACTIONS

### (a) Notice.

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

~~(2)(1) Filing Requirements.~~ ~~At the time of removal, the removing party must include with the~~ The Notice of Removal must include:

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

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

~~(B) a current copy of the scheduling order or notice of event due dates,~~ additional content required in DUCivR 81-2(a)(2), if available;  
and

(B) if the court's jurisdiction for removal is based upon ~~upon~~ diversity of citizenship;

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

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

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

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

- (i) in the case of each individual named as a party, that party's residence and domicile and any state or other jurisdiction of which that party is a citizen for purposes of 28 U.S.C. § 1332;
- (ii) in the case of each party that is a partnership, limited liability partnership, limited liability company, or other unincorporated association, like information as required in section 81-2(a)(2)(CA)(i) above for all its partners or members, as well as the state or other jurisdiction of its formation;
- (iii) in the case of each party that is a corporation, its state or other jurisdiction of incorporation, principal place of business, and any state or other jurisdiction of which that party is a citizen for purposes of 28 U.S.C. § 1332;
- (iv) in the case of an assigned claim, corresponding information for each original owner of the claim and for each assignee;

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

~~(vi)(C) if the information above or a designated party is unknown to the removing party,~~ the removing party must state ~~that~~ in the Notice of Removal. ~~Thereafter, within~~ if any of the information above is unknown. Within 21 days after removal, the removing party must file an update that includes amended notice containing the omitted information.

**(b) Attachment of State Court Record.**

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

- (1) a copy of the operative complaint;

- (2) a current copy of the state court docket sheet;
- (3) a copy of the operative scheduling order or notice of event due dates, if available; and
- (4) a single attachment containing all pleadings, motions, orders, and other relevant filings, organized in chronological order by the state court filing date, and if applicable, consistent with DUCivR 5-2 and 5-3.

**1.(c) Pending State Court Motions.**

- (1) Disposition of Pending State Court Motions. All pending motions and other requests directed to the state court are automatically denied without prejudice ~~upon removal, and they may be refiled in this court. Motions refiled in this court must include citation to all relevant federal law and must be revised as necessary to comply with this court's rules~~ on removal.
- (2) Obligation to Refile. If a party seeks a decision on a motion that was automatically denied under DUCivR 81-2(c)(1), the party must refile the motion, citing to relevant federal law and state if expedited consideration is requested. DUCivR 7-1 governs the motion.

**2.(d) Scheduling Order After Removal.**

- (1) Unless stipulated by the parties and ordered by the court, all deadlines contained in the state court scheduling order or notice of event due dates are automatically vacated on removal.
- ~~(1)~~(2) The parties must conduct an Attorney Planning Meeting under Fed. R. Civ. P. 26(f) within ~~10~~14 days after the time to file a motion to remand has expired or the motion has been denied, whichever occurs last.
- ~~(2)~~(3) The plaintiff must file the Attorney Planning Meeting Report within 5 days after the meeting.
- ~~(3)~~(4) At the same time the Attorney Planning Meeting Report is filed, the plaintiff must email a proposed scheduling order in Word format to the

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

|

## DUCivR 83-2 ASSIGNMENT AND TRANSFER OF CIVIL CASES

The Chief Judge is responsible for the ~~Supervision of the assignment of civil cases to the judges of the court~~ is the responsibility of the Chief Judge.

### (a) Case Assignment System.

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

- (1) a case to be heard in locations other than Salt Lake City may, to reduce travel expense and time, be directly assigned to a judge resident in that location or to a judge designated for general assignment in that location;
- (2) the Chief Judge may sua sponte assign or reassign any case upon a finding that the assignment or reassignment is necessary for the efficient administration of justice.

### (b) Judicial Recusal.

In the event of a judicial recusal, another judge will be assigned to the case through the random selection case assignment system described in section 83-2(a) of this rule. If all judges recuse themselves, the Chief Judge of the court will request the Chief Judge of the Tenth Circuit Court of Appeals to assign a judge from another district within the circuit to hear the matter.

### (c) Emergency Matters.

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

**(d) Post-Conviction Relief.**

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

**(e) Section 2255 Motions.**

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

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

In the event multiple matters arising out of a single bankruptcy case are filed in this court (whether appeals under DUCivR 83-7.9; referrals of indirect criminal contempt of court under DUCivR 83-7.8; withdrawals of the reference of cases, proceedings or contested matters under DUCivR 83-7.4; or otherwise), the first matter will be randomly assigned to a judge of this court, as set forth in section 83-2(a) above. Thereafter, all subsequent matters arising out of the same bankruptcy case will be assigned to the judge of this court to whom the first matter was assigned.

**(g) Transfer of Related Case.**

Whenever two or more related cases are pending before different judges of this court, any party to the later-filed case may file a motion and proposed order to transfer the case to the judge with the lower-numbered case. To determine whether the case should be transferred, the court may consider the following factors:

- (1) Whether the cases arise from the same or a closely related transaction or event;
- (2) Whether the cases involve substantially the same parties or property;



- (3) Whether the cases involve the same patent, trademark, or copyright;
- (4) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (5) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges;
- (6) Whether there is risk of inconsistent verdicts or outcomes;
- (7) Whether the motion has been brought for an improper purpose; or
- (8) Other factors as provided by case law.

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

**(h) Supplemental Proceedings.**

When a party files a Motion for Supplemental Proceedings, the district judge will enter a referral under 28 U.S.C. § 636(b)(1)(A) to the same magistrate judge who was initially assigned, or the Clerk's Office will randomly assign a magistrate judge if one was not previously assigned.

DUCivR 83-3 ~~CAMERAS, RECORDING~~ELECTRONIC DEVICES, AND BROADCASTS

(a) ~~Use of~~ **Electronic Devices.**

~~The policy for authorized use of electronic devices in the Orrin G. Hatch United States Courthouse in the District of Utah is available on the court's website. This policy governs the appropriate use of devices such as cellular phones, laptops, tablets, cameras, and other devices having wireless communication capability both in and out of courtrooms within the district court. The unauthorized~~The use of electronic devices is prohibited in any federal courthouse or courtroom of the District of Utah, except as otherwise authorized by this rule, court order, or the Electronic Device Use Policy.

**(b) Electronic Device Use Application.**

Credentialed members of the media may file an application with the Clerk of Court for permission to use electronic devices in public hearings. The application and a list of acceptable courtroom uses of electronic devices (listed by judge) are available in the Clerk's Office and on the court's website.

**1.(c) Photographs and Recordings.**

~~The taking of photographs; the making of audio, mechanical, electronic, digital, or similar records in the courtroom and areas immediately adjacent thereto in connection with any judicial proceeding, including recesses; and the broadcasting of judicial proceedings by radio, television, telephone, or other devices or means, are prohibited. In addition, the advertising~~Photographing, recording, or rebroadcasting of court proceedings is prohibited. Advertising or posting of audio, video, or other forms of recordings or transcripts of court proceedings made in violation of this rule on any Internet website, blog, or other means of transmitting ~~such~~the information via electronic means is prohibited. Violation of these prohibitions ~~is sanctionable by the court and~~ may result in ~~confiscation of~~

~~the offending device by the United States Marshal or deputized Court Security Officer.~~

## ~~2. Credentialed Media.~~

~~Credentialed members of the sanctions, including removal of court-issued media may petition the Clerk of Court for leave credentials, restricted access to use electronic devices in public future hearings pursuant denial of access to the policy of the district or magistrate judge conducting the hearing. Usage policies for each district and magistrate judge may be found on the court's website. Applications for use of electronic devices and future hearings, confiscation of a list of permissible uses of electronic devices for current judges are available in the Clerk's Office and on the court's website device, or any other sanction the court deems necessary and appropriate.~~

## ~~3.(d) Exceptions.~~

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

## ~~DUCivR 83-4 — COURT SECURITY~~

### ~~(a) — Application of the Rule.~~

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

### ~~1. — Persons Subject to Search.~~

~~All persons seeking entry to a building occupied or used by the United States Courts in the District of Utah are subject to search by the United States marshal, deputy United States marshals, or other court security officers designated by the marshal or the court. All persons other than authorized officers and employees of the United States Government are required, upon entering the Orrin G. Hatch United States Courthouse or other place of holding court in the District of Utah, to submit their persons and belongings in their possession at the time of entry to electronic detection equipment under the supervision of the marshal.~~

### ~~2. — Weapons.~~

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

### **~~3. Safety.~~**

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

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

Under 28 U.S.C. § 157(a), ~~the following are automatically referred to the bankruptcy judges unless a rule or order~~ of this District:

- ~~(1) — court expressly provides otherwise, any ~~or~~and all cases under ~~title~~Title 11 of United States Code;~~
- ~~(2) — and any ~~or~~and all proceedings arising under ~~title~~Title 11; or~~
- ~~(3) — any or all proceedings arising in or related to a case under ~~title~~Title 11 are referred to the bankruptcy judges for the District of Utah for consideration and resolution consistent with the law. This reference applies to all pending bankruptcy cases and proceedings except those currently before the district court and to all bankruptcy cases and proceedings hereafter filed in the District of Utah.~~

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

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

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

~~Personal injury tort and wrongful death claims referred to the bankruptcy court under DUCivR 83-7.1 must be transferred to the District Court when required under 28 U.S.C. § 157(b)(5) pursuant to an order of the bankruptcy court on the court's own motion or on the motion of a party filed at any time in accordance with the procedures set forth in DUCivR 83-7-4.~~



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

**(a) Withdrawal Motion ~~to Withdraw the Reference.~~**

~~A person seeking to withdraw a case, adversary proceeding or contested matter which has been referred to the bankruptcy court under 28 U.S.C. § 157(a) and DUCivR 83-7.1 motion requesting withdrawal of the reference must ~~file~~be filed in the bankruptcy court ~~the following documents:~~~~

- ~~(1) — a motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) and Fed. R. Bank. P. 5011 (the “Withdrawal Motion”);~~
- ~~(2) — an ex parte application seeking an order of the bankruptcy court transmitting such motion to the district court; and~~
- ~~(3) — a proposed order approving the application and authorizing the transmittal of the motion to the district court (the “Transmittal Order”).~~

**~~1. Grounds for Withdrawal of the Reference.~~**

~~A Withdrawal Motion must certify and allege that:~~

~~Withdrawal of the reference withdrawal is:~~

- ~~(1) mandatory under 28 U.S.C. § 157(b)(5) because the proceeding is a personal injury tort or a wrongful death claim;~~
- ~~(2) Withdrawal of the reference is mandatory under 28 U.S.C. § 157(d) because resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce; or~~
- ~~(3) Withdrawal of the reference is appropriate because cause exists under 28 U.S.C. § 157(d). The alleged cause must be as specified in the motion.~~

**~~2. Time for Making a Withdrawal Motion.~~**

**(b) Briefing Requirements.**

A withdrawal motion must comply with DUCivR 7-1, unless the court orders otherwise or the parties stipulate to shorter requirements.

**(c) Filing Deadlines.**

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

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

~~(2) Adversary Proceedings. A motion to withdraw the reference of an adversary proceeding must be filed within 28 days of the time the movant files its first pleading.~~

~~(3) Contested Matters. In contested matters,~~

~~(A) If the person initiating the contested matter seeks to withdraw the reference, the motion must file a Withdrawal Motion be filed separately and simultaneously with, ~~but separate from, the motion or application the pleading~~ initiating the contested matter.~~

~~(3)(B) Any other person seeking to withdraw the reference of a contested matter must separately file a ~~Withdrawal Motion~~ withdrawal motion~~

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

~~—3.(d) Transmittal of the Withdrawal Motion and Transfer to the District Court—~~

~~Opening of Miscellaneous Action.~~ and

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

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

~~4. Procedure Upon Granting of Withdrawal Motion as to a Proceeding or Contested Matter.~~

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

~~(1) Conversion of Miscellaneous Action to Civil Action. Upon the entry of an order granting a Withdrawal Motion, the district court clerk must convert the pending miscellaneous action into a civil action, and must change the caption of the action, such that the title of each party in the civil action is consistent with its title in the bankruptcy court prior to transfer to the~~

~~district court (e.g., plaintiff/defendant; debtor/creditor; movant/respondent, as applicable). The district court clerk must note on the docket of the civil action that the applicable proceeding or contested matter has been transferred to the district court from the bankruptcy court. Such notation must also identify the bankruptcy court number of the applicable proceeding which has been transferred from the bankruptcy court; or in the event of a transfer of a contested matter, the notation must identify the bankruptcy court number of the case from which the contested matter has been transferred.~~

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

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

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

**~~5. Procedure Upon Granting of Withdrawal Motion as to a Case.~~**

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

- ~~(1) After transmittal of the motion to the district court, the following apply:~~
- ~~(A) all filings related to the withdrawal motion must be filed in the district court; and~~
  - ~~(B) the local rules of the district court apply unless otherwise ordered.~~
- ~~(2) After the withdrawal motion is granted, the following apply:~~
- ~~(A) the bankruptcy court will transfer the bankruptcy case, adversary proceeding, or contested matter to the district court;~~
  - ~~(B) subsequent filings related to the withdrawn case, adversary proceedings, or contested matter must be filed in the district court;~~

(C) all existing deadlines pending at the time of transfer remain in effect; and

(D) the local rules of the district court apply unless otherwise ordered.

~~DUCivR 83-7.5 — BANKRUPTCY — DETERMINATION OF PROCEEDINGS AS “NON-CORE”~~

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

## DUCivR 83-7.6 BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE

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

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



## DUCivR 83-7.7 BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT

\_\_\_\_\_ Under 28 U.S.C. § 157(e), the district court ~~authorizes and directs~~expressly designates the bankruptcy judges to conduct jury trials ~~in all proceedings in which a party is entitled to trial by jury and a jury is timely demanded, except when prohibited by applicable law. Fed. R. Civ. P. 47-51 and the applicable District Court Rules of Practice will apply to the conduct of a jury trial by a bankruptcy judge.~~

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

**(a) Limited Authority.**

Bankruptcy judges may not exercise powers of criminal contempt, except when ~~such~~the conduct is committed in the presence of the court. ~~if~~

**(b) Certification to District Court.**

(1) When there is an allegation that a person or a representative of an entity, who is subject to the bankruptcy judge court's jurisdiction, has reasonable grounds for belief that there has been a commission of any committed an act or engaged in conduct deemed to that may constitute criminal contempt not committed in outside the presence of the court, the bankruptcy judge may certify forthwith such the facts to a judge of the district court and may serve or cause to be served by serving an Order to Show Cause upon any person or entity whose behavior is brought into question under this rule an order requiring such person at issue.

(2) The Order to Show Cause must direct the person or representative of the entity to appear before a judge of that district court upon judge on a day certain specific date and time to show cause why such person they should not be adjudged held in contempt by reason.

**(c) Hearing Before District Court**

After receipt of the facts so certified. A judge of Order to Show Cause, the district court, thereupon, in a summary manner, will hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, may punish such person in the manner and to the same extent as for an equivalent contempt committed before a judge of the district court and rule.

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

~~(a) — Appeals to the district court, made under 28 U.S.C. § 158, must comply with DUCivR 10-1, the U.S. Bankruptcy Appellate Panel of the Tenth Circuit Local Rules (BAP Rules), and Part VIII of the Fed. R. Bankr. P. If there is any difference conflict between DUCivR 10-1 and the BAP Rules, DUCivR 10-1 governs. When applying the BAP Rules, any reference to the “bankruptcy appellate panel clerk” means the clerk of the district court and any reference to “this court” means the district court.~~ Applicable Authority.

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

~~(b) — Transmittal Rule.~~

~~Upon issuance of the mandate in accordance with BAP Rule 8024-3, as incorporated in these rules by reference in section 83-7.9(a) above, a copy of this court's order or judgment and a copy of any opinion will be transmitted by the clerk of the bankruptcy court.~~

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

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

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

~~(B) — the notice of appeal and the statement of election;~~

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

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

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

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

~~(A) — any documents transmitted by the bankruptcy court clerk to the bankruptcy appellate panel clerk; and~~

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

~~(3) — Opening of a Case. Upon receipt of the preliminary transmission under sections 83-7.9(c)(1) or (2) above, the clerk must open a case, and all documents related to the appeal thereafter must be filed in that case.~~

~~(4) — Supplemental Transmission. After the preliminary transmission has been sent, if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk or the bankruptcy appellate panel clerk, as applicable, must transmit to the clerk a copy of the motion, any order disposing of the motion, and the related docket entries.~~

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

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

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

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

~~(A) — Form. The appendix must be separate from the brief.~~

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

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

~~(D) — Transcripts. The appendix must contain all transcripts, or portions of transcripts, necessary for the court's review.~~

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

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

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

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

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

## DUCrimR 16-1 DISCOVERY

### ~~Rules Governing~~

#### **(a) Discovery Motion Practice.**

~~Motions for discovery must be made in compliance with the Federal Rules of Criminal Procedure governing motion practice in criminal cases and with these District Court Rules of Practice. Specific discovery conditions may be stipulated to by the parties. Prior to filing discovery requests or motions with the court, counsel for the government and for the defendant must attempt to agree to a mutually acceptable pretrial exchange of discovery. If such an agreement is reached, counsel for both parties must sign and file with the court a joint discovery statement describing the terms and conditions of the agreement.~~

#### **~~(b) Alibi Witnesses and Mental Illness Experts.~~**

~~Alibi witness discovery is governed by Fed. R. Crim. P. 12.1 rather than by this criminal rule. Expert testimony discovery regarding a defendant's mental condition is governed by Fed. R. Crim. P. 12.2(b) rather than by this rule.~~

#### **~~(c) Motions Pursuant to Fed. R. Crim. P. 16.~~**

~~A discovery request under Fed. R. Crim. P. 16 must be made not later than the date set by the district or magistrate judge. The request must be in writing and state with particularity the material sought. Unless otherwise ordered by the court, the party obligated to disclose under Fed. R. Crim. P. 16 must comply promptly but not fewer than 14 days prior to trial. All exhibits subject to copying under Fed. R. Crim. P. 16 must be returned to the party from whom they were obtained prior to trial. As set forth in section 16-1(h) below, the party obligated to disclose under Fed. R. Crim. P. 16 must file a notice of compliance specifying with particularity how the request for discovery was satisfied. The government may not require the defendant or the defendant's attorney to withdraw or refrain from making a discovery request as a condition to an open file policy. Where the government agrees to an open file policy in a particular case, the government nevertheless must comply with the notification of compliance requirement set forth in section 16-1(h) below. Where the government agrees to an open file policy, the defendant must provide reciprocal discovery as required by Fed. R. Crim. P. 16.~~

#### **~~(d) Motions Not Governed by Fed. R. Crim. P. 16.~~**

~~Motions for discovery, other than those under Fed. R. Crim. P. 16, must be in writing and specify with particularity the legal and factual basis for such discovery. Motions for discovery based upon constitutional or statutory grounds must specify with certainty the requested information and may be supported by affidavits filed with the motion. If the court grants a motion~~

~~for discovery, or if the parties agree to production of the requested material, a notification of compliance with the discovery request, as set forth in section 16-1(h) below, must be made as soon as discovery is completed.~~

~~**(e) Jencks Act Discovery.**~~

~~Where the government agrees, under an open file policy or otherwise, to provide pretrial discovery of witness statements, or where the court orders production of grand jury materials or witness statements in accordance with 18 U.S.C. § 3500 et seq., and Fed. R. Crim. P. 26.2, the defendant must provide reciprocal pretrial discovery of witness statements to the government.~~

~~**(f) Discovery Ordered by Pretrial Conference.**~~

~~The court may order discovery as it deems proper under Fed. R. Crim. P. 17.1. A notification of compliance, as set forth in section 16-1(h) below, with any such discovery order, must be made by the party required to make disclosure.~~

~~**(g) Motions for Protective or Modifying Orders.**~~

~~Motions for protective or modifying orders may be made after a request, motion, or order of discovery has been made. Such motions must be in writing and upon notice and must specify with particularity the basis upon which relief is sought.~~

~~**(h) Notification of Compliance.**~~

~~The notification of compliance must specify with particularity the matter produced for discovery. If the notification of compliance does not accurately describe the materials or information produced, the opposing attorney must file with the court an objection stating in detail how the notification is inaccurate or incomplete to preserve the party's rights to object to the adequacy of discovery provided.~~

The parties must make reasonable efforts to agree to a pretrial exchange of discovery before seeking court assistance.

**(b) Electronically Stored Information (ESI).**

General Order No. 22-003 establishes guidelines for the production of discoverable ESI in criminal proceedings.

**(c) Expert Disclosure Deadline.**

Unless the court orders otherwise, the parties must disclose experts related to their case in chief 30 days before the final pretrial conference by filing a



notice of intent to use an expert.

## ~~DUCrimR 16-2 — DISCOVERY — SEARCH WARRANTS~~

~~The defendant may demand, at any time after the filing of the complaint, information, or indictment and prior to the date set for the filing of motions, that the government provide information as to whether any evidence obtained or derived from the execution of a search warrant will be used at trial against that defendant. Upon such demand, the government must provide to that defendant copies of all search warrants, affidavits, or records of warrants relevant to or connected with the prosecution of that defendant and must file copies of the same with the Clerk of Court. The government also must give written notice to that defendant of what evidence obtained or derived from the execution of any search warrant the government intends to offer at trial against that defendant. If the search warrants, affidavits, or records of warrants are under seal, the government must so state in response to a demand for disclosure. On said response, the defendant, in order to obtain disclosure of said documents, must file a motion to unseal the documents. Where the government objects to the unsealing, it must file an appropriate and timely response, and a hearing, if necessary, will be set for the court to hear the motion and objections. Where no objections to unsealing the documents are filed, the defendant must prepare an order for entry by the court.~~

## **~~DUCrimR 40-1 — REMOVAL PROCEEDINGS~~**

### **~~(a) Notification of Removal.~~**

~~When the United States Attorney's Office and the marshal receive information that a person charged in the District of Utah has been ordered removed from another district either by warrant or by a release with directions to appear in this district, they must promptly notify the magistrate judge who will calendar the matter to ensure a timely appearance of the defendant before the magistrate judge.~~

### **~~1. Delivery of Pertinent Documents.~~**

~~When the Clerk of Court receives any letter or documents pertaining to the removal of a person to this district from any other district, the clerk will promptly deliver the same to the magistrate judge for proper processing with notice to the United States Attorney's Office of the removal. The clerk will obtain from the removing jurisdiction all documents pertinent to the release or detention of the defendant for the magistrate judge's use in making an appropriate determination on the pretrial detention or release of the defendant.~~

### **~~2. Warrant of Removal.~~**

~~When the magistrate judge issues a warrant of removal for any person charged in another district, or when the magistrate judge releases such a person with directions to appear in the district of origin, the magistrate judge will promptly deliver the docket sheet and all related documents pertaining to the matter to the Clerk of Court. The clerk will promptly forward the same to the district of origin.~~

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

### **(a) Motions to Seal.**

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

- (1) documents to be sealed, including the return;
- (2) grounds in support of the seal; and
- (3) the term of seal, which will be no more than 1 year unless the court orders otherwise.

### **(b) Motion to Extend the Seal.**

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

### **(c) Redacted Copy.**

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

**DUCrimR 49.1-1 ~~REDACTING~~REDACTION OF PERSONAL IDENTIFIERS**

**(a) Redacting Personal Identifiers in ~~Pleadings~~Court Filings.**

~~(1) The filer~~A party must redact ~~personal information in filings with the court,~~  
~~as required by personal identifiers listed in~~ Fed. R. Crim. P. 49.1.~~The in~~  
~~every court may order redaction~~filing made by that party.

When a motion to unseal is filed and granted or a seal is set to expire, at least 10 days before the seal expires, the filing party must provide to the Clerk's Office a copy of additional~~the document that redacts the~~ personal identifiers ~~by motion and order in a specific case or as to a specific document or documents.~~

~~(2) Redacting~~listed in Fed. R. Crim. P. 49.1. The redacted copy will be added to the docket and become available to the public at the time the seal expires.

**(b) Reviewing Transcripts to Redact Personal Identifiers ~~in Transcripts~~.**

~~(1) Attorneys are responsible to review transcripts for personal information which is required to be redacted under Fed. R. Crim. P. 49.1 and provide notice to the~~that a court reporter ~~of the redactions which must be made before the~~has filed an original transcript becomes available through PACER. ~~Unless otherwise ordered by the court, the attorney, each party~~ must review the entire transcript for personal identifiers, including the following ~~portions of the transcript:~~

\_\_\_\_\_sections:

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

~~(2)~~(B) statements of the party;

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

(D) \_\_\_\_\_

~~(4)~~(E) any other portion of the transcript ~~as if~~ ordered by the court. \_-

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

~~(2) If no redactions are necessary, no action is needed, and the transcript will be electronically available on PACER 90 days after a court reporter files the original transcript.~~

**(c) Procedure for ~~Reviewing and~~ Redacting Transcripts.**

~~Upon~~If redaction is required:

~~(1) within 21 days after receiving notice of the filing of that a transcript ~~with the court, the attorneys must within 7 business days review the transcript and, if necessary, file~~has been filed, a party must file a Notice of Intent to Request Redaction ~~of the Transcript. Within 21 calendar days of the filing of the;~~~~

~~(2) within 42 days after receiving notice that a transcript ~~the attorney~~has been filed, a party must file a notice of redactions to be made. TheRedaction Request, specifically identifying the page and line number and the specific redaction requested; and~~

~~(3) within 63 days after filing the transcript, a court reporter must make the requested redactions ~~must be made by the court reporter within 31 calendar days of the filing of the transcript and a~~and file the redacted copy of the transcript ~~promptly be filed with the clerk. Transcripts that do not require redactions and redacted transcripts must be electronically available on PACER 90 days after filing of the original transcript by the court reporter.~~~~

~~DUCrimR 56-1 OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS~~

~~For purposes of criminal matters, details regarding the office of record, U.S. Courts Library, days and hours of business are the same as those set forth in DUCivR 77-1.~~

**DUCrimR 57-1 ~~GENERAL~~ FORMAT OF ~~PAPERS~~DOCUMENTS**

~~All papers in criminal matters submitted to the court must conform to the format requirements of DUCivR 10-1.~~

DUCivR 10-1 governs the formatting of documents filed in criminal cases.



## DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

~~Supervision of~~The Chief Judge oversees the ~~random~~ assignment of criminal cases to the judges of the court is the responsibility of the Chief Judge and will proceed as ~~specified in~~under DUCivR 83-2.

~~**DU CrimR 57-6 — SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS**~~

~~In a criminal matter that is likely to be widely publicized, the court, during the investigation or at any other time, may issue an order governing extrajudicial statements by parties or witnesses which have a substantial likelihood of materially influencing a criminal proceeding or of preventing a fair trial or impeding the administration of justice. The court also may issue orders concerning the seating and conduct of spectators and news representatives, or the management and sequestration of jurors or witnesses, as the interests of justice may require.~~

**DUCrimR 57-11 COURT APPROVAL OF STIPULATIONS**

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

———— The court must approve any stipulation that modifies a court order.

**DUCrimR 57-12 REGULATION OF ATTORNEYS**

~~———— All procedural matters relating to DUCivR 83-1.1 through 83-1.6 govern attorney admissionsadmission, registration, appearance, substitution and withdrawal, discipline and removal, and student practice in criminal ~~matters are governed by the applicable civil rules, DUCivR 83-1.1 through 83-1.6~~cases.~~

**DUCrimR 57-13 ~~CAMERAS, RECORDING ELECTRONIC~~ DEVICES, AND BROADCASTS**

~~The DUCivR 83-3 governs the use of cameras, recording electronic devices, in and broadcasts in of criminal matters is governed by DUCivR 83-3 cases.~~

~~DUCrimR 57-14 — COURT SECURITY~~

~~—Matters regarding court security during all criminal proceedings and otherwise are governed by DUCivR 83-4.~~