

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF UTAH**



RULES OF PRACTICE

DECEMBER 2013

TABLE OF CIVIL RULES

<u>RULE #</u>		<u>PAGE</u>
DUCivR 1-1	AVAILABILITY AND AMENDMENTS	1
(a)	Availability.	1
(b)	Amendments to the Rules.	1
DUCivR 1-2	SANCTIONS FOR CIVIL RULE VIOLATIONS	1
DUCivR 3-1	CLERK'S SCHEDULE OF MISCELLANEOUS FEES	1
DUCivR 3-2	ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES	2
(a)	Non-incarcerated Parties.	2
(b)	Incarcerated Parties.	2
DUCivR 3-3	COMMENCEMENT OF AN ACTION: NOTIFICATION OF MULTI-DISTRICT LITIGATION.....	3
DUCivR 3-4	CIVIL COVER SHEET	3
DUCivR 3-5	CONTENT OF THE COMPLAINT.....	4
DUCivR 5-1	FILING OF PAPERS.....	4
(a)	Electronic Filing Permitted.	4
(b)	Filing of Pleadings and Papers.....	4
DUCivR 5-2	FILING CASES AND DOCUMENTS UNDER COURT SEAL	5
(a)	General Rule.	5
(b)	Sealing of New Cases.	6
(c)	Sealing of Pending Cases.....	6
(d)	Procedure for Filing Documents Under Seal.....	6
(f)	Access to Sealed Cases and Documents.	9
DUCivR 5-3	HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS	9
(a)	Form.	9
(b)	Supporting Affidavit.	9
(c)	Filing Requirements.....	10
(d)	Answers and Responses.....	10
DUCivR 5.2 - 1	REDACTING PERSONAL IDENTIFIERS.....	10
(a)	Redacting Personal Identifiers in Pleadings.	10
(b)	Redacting Personal Identifiers in Transcripts.	10
(c)	Procedure for Reviewing and Redacting Transcripts.	11
DUCivR 6-1	FILING DEADLINES WHEN COURT IS CLOSED	11
DUCivR 7-1	MOTIONS AND MEMORANDA	11
(a)	Motions.	11
(b)	Response and Reply Memoranda.....	13

	(c)	Supporting Exhibits to Memoranda.....	16
	(d)	Failure to Respond.....	16
	(e)	Leave of Court and Format for Lengthy Motions and Memoranda.....	16
	(f)	Oral Arguments on Motions.....	16
DUCivR 7-2		CITING UNPUBLISHED JUDICIAL DECISIONS	17
	(a)	Precedential Value.....	17
	(b)	Citation Form.....	17
	(c)	Copies.....	17
DUCivR 7-3		REQUEST TO SUBMIT FOR DECISION.....	17
DUCivR 7-4		FILINGS IN ALL ACTIONS SEEKING REVIEW OF A DECISION.....	17
	(a)	Pleadings.....	18
	(b)	Length of Briefs.....	18
DUCivR 7-5		HYPERLINKS IN COURT FILINGS	18
	(a)	Encouraged and Impermissible Hyperlinks.....	18
DUCivR 9-1		ALLOCATION OF FAULT.....	19
	(a)	Allocating Party Filing Requirements.....	19
	(b)	Allocating Party Time Requirements.....	19
DUCivR 10-1		GENERAL FORMAT OF PAPERS	20
	(a)	Form of Pleadings and Other Papers.....	20
	(b)	Font Requirements.....	22
	(c)	Examination by the Clerk.....	22
DUCivR 15-1		AMENDED COMPLAINTS	22
DUCivR 16-1		PRETRIAL PROCEDURE.....	23
	(a)	Pretrial Scheduling and Discovery Conferences.....	23
	(b)	Magistrate Judge.....	24
	(c)	Attorneys' Conference.....	24
	(d)	Final Pretrial Conference.....	24
	(e)	Pretrial Order.....	24
DUCivR 16-2		ALTERNATIVE DISPUTE RESOLUTION	25
	(a)	Authority.....	25
	(b)	Procedures Available.....	25
	(c)	Cases Excluded from ADR Program.....	25
	(d)	Certificate of ADR Election.....	25
	(e)	Case Referral Procedure.....	26
	(f)	Stay of Discovery.....	26
	(g)	ADR Case Administration.....	26
	(h)	Supervisory Power of the Court.....	26
	(i)	Compliance Judge.....	26
	(j)	Violations of the Rules Governing the ADR Program.....	27

DUCivR 16-3	SETTLEMENT CONFERENCES	27
(a)	Authority for Settlement Conferences.	27
(b)	Referral of Cases for Purposes of Conducting a Settlement Conference.	27
(c)	Settlement Proceedings.....	27
(d)	Confidential Nature of Settlement Proceedings.....	28
DUCivR 23-1	DESIGNATION OF PROPOSED CLASS ACTION	29
(a)	Caption.....	29
(b)	Class Allegation Section.....	29
(c)	Class Action Requisites.	29
(d)	Motion for Certification.....	29
DUCivR 24-1	NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY	30
(a)	An Act of Congress.....	30
(b)	A Statute of a State.	30
DUCivR 26-1	DISCOVERY REQUESTS AND DOCUMENTS	31
(a)	Form of Responses to Discovery Requests.....	31
(b)	Filing and Custody of Discovery Materials.....	31
DUCivR 26-2	STANDARD PROTECTIVE ORDER AND STAYS OF DEPOSITIONS... ..	32
(a)	Standard Protective Order.....	32
(b)	Motion for Protective Order and Stay of Deposition.....	33
DUCivR 37-1	DISCOVERY: MOTIONS AND DISPUTES; REFERRAL TO MAGISTRATE JUDGE	33
(a)	Informal Conference to Settle Discovery Disputes.	33
(b)	Motions to Compel Discovery.....	33
(c)	Discovery Motions Before Magistrate Judge.	33
DUCivR 41-1	SANCTIONS: FAILURE TO NOTIFY WHEN SETTLEMENT IS REACHED BEFORE A SCHEDULED JURY TRIAL	34
DUCivR 41-2	DISMISSAL FOR FAILURE TO PROSECUTE.....	35
DUCivR 42-1	CONSOLIDATION OF CIVIL CASES.....	35
DUCivR 43-1	COURTROOM PRACTICES AND PROTOCOL.....	36
(a)	Conduct of Counsel.....	36
(b)	Exclusion of Witnesses.	36
(c)	Arguments.....	37
(d)	Presence of Parties and Attorneys upon Receiving Verdict or Supplemental Instructions.....	37
DUCivR 45-1	PRIOR NOTICE OF SUBPOENA FOR NONPARTY	37
DUCivR 47-1	IMPANELMENT AND SELECTION OF JURORS	38
(a)	How Impaneled.....	38
(b)	Requests for Voir Dire Examination.....	38

	(c)	Voir Dire Examination and Exercise of Challenges.....	38
DUCivR 47-2		COMMUNICATION WITH JURORS	39
	(a)	Communications Before or During Trial.....	39
	(b)	Communications After Trial.....	39
DUCivR 48-1		NUMBER OF JURORS; IMPANELING AND SELECTION OF JURY.....	39
DUCivR 51-1		INSTRUCTIONS TO THE JURY.....	39
	(a)	Proposed Jury Instructions.....	39
	(b)	Ruling on Requests.....	40
	(c)	Objections or Exceptions to Final Instructions.....	40
DUCivR 54-1		JUDGMENTS: PREPARATION OF ORDERS, JUDGMENTS, FINDINGS OF FACT AND CONCLUSIONS OF LAW	41
	(a)	Orders in Open Court.....	41
	(b)	Orders and Judgments.....	41
	(c)	Proposed Findings of Fact and Conclusions of Law.....	41
	(d)	Written Order Required for Voluntary Dismissals.....	42
DUCivR 54-2		COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES	42
	(a)	Bill of Costs.....	42
	(b)	Objections to Bill of Costs.....	42
	(c)	Taxation of Costs.....	43
	(d)	Judicial Review.....	43
	(e)	Attorneys' Fees.....	43
	(f)	Procedures and Requirements for Motions for Attorneys' Fees.....	43
DUCivR 56-1		SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA	44
	(a)	Summary Judgment Motions and Memoranda; Length and Filing Times.....	44
	(b)	Motion; Elements and Undisputed Material Facts; and Background Facts..	44
	(c)	Memorandum in Opposition; Response to Elements and Facts; and Background Facts.....	45
	(d)	Reply .	46
	(e)	Citations of Supplemental Authority.....	46
	(f)	Supporting Exhibits to Memoranda.....	47
	(g)	Failure to Respond.....	47
DUCivR 58-1		JUDGMENT: FINAL JUDGMENT BASED UPON A WRITTEN INSTRUMENT.....	47
DUCivR 67-1		RECEIPT AND DEPOSIT OF REGISTRY FUNDS	48
	(a)	Court Orders Pursuant to Fed. R. Civ. P. 67.....	48
	(b)	Provisions for Designated or Qualified Settlement Funds.....	48
	(c)	Deposit of Required Undertaking or Bond in Civil Actions.....	49
	(d)	Registry Funds Invested in Interest-Bearing Accounts.....	49
	(e)	Service Upon the Clerk.....	49

	(f)	Deposit of Funds.....	49
	(g)	Disbursements of Registry Funds.....	50
	(h)	Management and Handling Fees.....	50
	(i)	Verification of Deposit.....	50
	(j)	Liability of the Clerk.....	50
DUCivR 69-1		SUPPLEMENTAL PROCEEDINGS.....	51
	(a)	Motion to Appear.....	51
	(b)	Hearing Before Magistrate Judge.....	51
	(c)	Failure to Appear.....	51
	(d)	Fees and Expenses.....	51
DUCivR 71A-1		DEPOSITS IN THE COURT REGISTRY.....	51
DUCivR 72-1		MAGISTRATE JUDGE AUTHORITY.....	52
DUCivR 72-2		MAGISTRATE JUDGE FUNCTIONS AND DUTIES IN CIVIL MATTERS	
		52
	(a)	General Authority.....	52
	(b)	Authority Under Fed. R. Civ. P. 72(a).....	53
	(c)	Authority Under Fed. R. Civ. P. 72(b).....	53
	(d)	Authority Under 42 U.S.C. § 1983.....	53
	(e)	Authority Under 28 U.S.C. §§ 2254 and 2255.....	54
	(f)	Authority to Function as Special Master.....	54
	(g)	Authority to Adjudicate Civil Cases.....	54
DUCivR 72-3		RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL	
		DECISION.....	54
	(a)	Stays of Magistrate Judge Orders.....	54
	(b)	Ruling on Objections.....	55
DUCivR 77-1		OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF	
		BUSINESS.....	55
	(a)	Office of Record.....	55
	(b)	Hours and Days of Business.....	55
	(c)	U.S. Courts Law Library.....	56
DUCivR 77-2		ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK.....	56
	(a)	Orders and Judgments.....	56
	(b)	Clerk's Action Reviewable.....	57
DUCivR 79-1		ACCESS TO COURT RECORDS.....	57
	(a)	Access to Public Court Records.....	57
	(b)	Sealed or Impounded Records.....	58
	(c)	Search for Cases by the Clerk.....	58
DUCivR 81-1		SCOPE AND APPLICABILITY OF RULES.....	58
	(a)	Scope of Rules.....	58
	(b)	Relationship to Prior Rules; Actions Pending on Effective Date.....	58

DUCivR 83-1.1	ATTORNEYS - ADMISSION TO PRACTICE.....	59
(a)	Practice Before the Court.....	59
(b)	Admission to the Bar of this Court.....	59
(c)	Active Member Status Requirement.....	60
(d)	Admission Pro Hac Vice.....	60
(e)	Attorneys for the United States.....	61
(f)	Pro Se Representation.....	62
(g)	Rules of Professional Conduct and Standards of Professionalism and Civility.	62
DUCivR 83-1.2	ATTORNEYS - REGISTRATION OF ATTORNEYS	62
(a)	General Requirement.....	62
(b)	Categories of Membership.....	62
(c)	Non-Member Status.....	63
(d)	Failure to Register.....	63
DUCivR 83-1.3	ATTORNEYS - APPEARANCES BY ATTORNEYS.....	63
(a)	Attorney of Record.....	63
(b)	Limited Appearance.....	64
(c)	Pro Se Representation.....	65
(d)	Appearance by Party.....	65
(e)	Notification of Clerk.....	65
DUCivR 83-1.4	ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY	65
(a)	Withdrawal Leaving a Party Without Representation.....	65
(b)	Withdrawal With and Without the Client's Consent.....	67
(c)	Procedure After Withdrawal.....	67
(d)	Substitution.....	68
DUCivR-83-1.5	ATTORNEYS - DISCIPLINE OF ATTORNEYS.....	68
DUCivR 83-1.5.1	ATTORNEYS - DISCIPLINARY ACTIONS - GENERAL PROVISIONS	68
(a)	Standards of Professional Conduct.....	68
(b)	Grounds for Discipline.....	69
(c)	Disciplinary Panel.....	69
(d)	Disciplinary Committee.....	69
(e)	Clerk of Court.....	69
(f)	Confidentiality.....	70
(g)	Waiver and Consent.....	70
(h)	Interim Suspension.....	70
(i)	Reinstatement from Interim Suspension.....	70
(j)	Participant Immunity.....	70
DUCivR 83-1.5.2	RECIPROCAL DISCIPLINE.....	71
(a)	Notice to the Court.....	71
(b)	Procedure.....	71
DUCivR 83-1.5.3	CRIMINAL CONVICTION DISCIPLINE.....	72

(a)	Notice to the Court.....	72
(b)	Procedure.	72
(c)	Sanctions.	72
DUCivR 83-1.5.4	REFERRAL BY A JUDICIAL OFFICER	73
(a)	Referral.	73
(b)	Procedure.	73
(c)	Sanctions.	73
DUCivR 83-1.5.5	ATTORNEY MISCONDUCT COMPLAINT	74
(a)	Complaint.....	74
(b)	Procedure.	74
(c)	Sanctions.	75
DUCivR 83-1.5.6	COMMITTEE ON THE CONDUCT OF ATTORNEYS	75
(a)	Procedure.	75
(b)	Investigation.....	75
(c)	Report and Recommendation.....	75
(d)	Recommendation for Evidentiary Hearing	76
DUCivR 83-1.5.7	EVIDENTIARY HEARING	76
(a)	Appointment of Hearing Examiner.....	76
(b)	Appointment of a Judicial Officer.	76
(c)	Appointment of Prosecutor.	76
(d)	Panel Hearing.....	76
(e)	Hearing Process.	76
(f)	Report and Recommendation.....	77
(g)	Fees and Costs.....	77
DUCivR 83-1.5.8	REINSTATEMENT	77
(a)	Reinstatement from Reciprocal Discipline Matters.....	77
(b)	Reinstatement from Other Disciplinary Orders.	77
(c)	Contents of the Petition.....	78
(d)	Procedure.	78
DUCivR 83-1.6	ATTORNEYS - STUDENT PRACTICE RULE	78
(a)	Entry of Appearance on Written Consent of Client and Supervising Attorney.	78
(b)	Law Student Eligibility.....	78
(c)	Responsibilities of Supervising Attorney.	79
(d)	Scope of Representation.	79
(e)	Law School Certification.	80
DUCivR 83-2	ASSIGNMENT AND TRANSFER OF CIVIL CASES	80
(a)	Random Selection Case Assignment System.	80
(b)	Judicial Recusal.	81
(c)	Emergency Matters.	81
(d)	Post-Conviction Relief.....	81

	(e)	Section 2255 Motions.	81
	(f)	Multiple Matters Arising Out of a Single Bankruptcy Case.	81
	(g)	Transfer of Related Case.	82
DUCivR 83-3		CAMERAS, RECORDING DEVICES, AND BROADCASTS	82
DUCivR 83-4		COURT SECURITY	83
	(a)	Application of the Rule.	83
	(b)	Persons Subject to Search.	83
	(c)	Weapons.	83
	(d)	Safety.	84
DUCivR 83-5		CUSTODY AND DISPOSITION OF TRIAL EXHIBITS	84
	(a)	Prior to Trial.	84
	(b)	During Trial.	84
	(c)	After Trial.	85
DUCivR 83-6		STIPULATIONS: PROCEDURAL REQUIREMENT	86
DUCivR 83-7.1		BANKRUPTCY - ORDER OF REFERENCE OF BANKRUPTCY MATTERS TO BANKRUPTCY JUDGES.	86
DUCivR 83-7.2		BANKRUPTCY - REMOVAL OF CLAIMS OR ACTIONS RELATED TO BANKRUPTCY CASES	86
DUCivR 83-7.3		BANKRUPTCY - TRANSFER OF PERSONAL INJURY TORT AND WRONGFUL DEATH CLAIMS TO THE DISTRICT COURT	86
DUCivR 83-7.4		BANKRUPTCY - WITHDRAWAL OF THE REFERENCE OF BANKRUPTCY CASES, PROCEEDINGS AND CONTESTED MATTERS	87
	(a)	Motion to Withdraw the Reference.	87
	(b)	Grounds for Withdrawal of the Reference.	87
	(c)	Time for Making a Withdrawal Motion.	87
	(d)	Transmittal of Withdrawal Motion to District Court and Opening of Miscellaneous Action.	88
	(e)	Procedure Upon Granting of Withdrawal Motion as to a Proceeding or Contested Matter.	89
	(f)	Procedure Upon Granting of Withdrawal Motion as to a Case.	90
DUCivR 83-7.5		BANKRUPTCY - DETERMINATION OF PROCEEDINGS AS “NON- CORE”	90
DUCivR 83-7.6		BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE	91
DUCivR 83-7.7		BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT	91
DUCivR 83-7.8		BANKRUPTCY - INDIRECT CRIMINAL CONTEMPT OF BANKRUPTCY COURT	91

DUCivR 83-7.9	BANKRUPTCY - APPEALS TO THE DISTRICT COURT FROM THE BANKRUPTCY COURT UNDER 28 U.S.C. § 158	92
(a)	Applicable Authority.	92
(b)	Transmittal Rule.....	92
(c)	Transmission of the Record Under Fed. R. Bank. P. 8007 and Opening of Miscellaneous Case.....	92
(d)	Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 8009.	93
DUCivR 86-1	EFFECTIVE DATE.....	94

DUCivR 1-1 AVAILABILITY AND AMENDMENTS

(a) Availability.

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

(b) Amendments to the Rules.

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

DUCivR 1-2 SANCTIONS FOR CIVIL RULE VIOLATIONS

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

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

DUCivR 3-1 CLERK'S SCHEDULE OF MISCELLANEOUS FEES

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

DUCivR 3-2 ACTIONS TO PROCEED WITHOUT PREPAYMENT OF FEES

(a) **Non-incarcerated Parties.**

- (1) Completion of Form AO 240. A non-incarcerated party wishing to proceed without having to pay the required fees under 28 U.S.C. § 1915 must complete and sign, under penalty of perjury, an Application to Proceed Without Prepayment of Fees and Affidavit (Application). The Application, Form 240, will be supplied without charge by the clerk of court upon request. A copy of the form is annexed as Appendix I to these rules.
- (2) Conditions for Filing. The clerk of court will not accept any action for filing with the court that is not accompanied by the payment of fees and security or accompanied by an Application which has been granted by the court. Where an action and an Application are submitted jointly to the clerk, the clerk will lodge the action until the court has reviewed the Application. If the application is approved, the clerk will file the action as of the date it was lodged. If the Application is denied, the clerk will notify the party that the action will not be filed until full payment is made.

(b) **Incarcerated Parties.**

- (1) Completion of an Application. Any incarcerated person seeking to file a civil action and to proceed without prepayment of fees must submit an Application to Proceed without Prepayment of Fees and Affidavit for Incarcerated Pro Se Plaintiffs, (Prisoner Application), copies of which are available from the clerk of court, and a certified statement of the person's prison trust account showing current account status and any account activity for the six-month period preceding the date of the Prisoner Application. A copy of both forms is annexed as Appendix II to these rules. Under the Prison Litigation Reform Act of 1995, the court will order an initial partial filing fee of twenty (20) per cent of the greater of (i) the average monthly deposits to the account during the six-month period preceding the filing of the action, or (ii) the average monthly balance in the account for the six-month period preceding the filing of the action. In each

following month, prison officials will calculate twenty (20) per cent of the preceding month's income credited to the prisoner's account and, each time the amount in the account exceeds ten (10) dollars, forward a check for that amount to the clerk of court.

- (2) Conditions for Filing. The clerk will lodge complaints and petitions from incarcerated parties accompanied by a Prisoner Application until certification of account balances and other required documents are received. Once all required documents are received, the clerk will forward the Prisoner Application to the magistrate judge for review. If the Prisoner Application is approved and the fee payment schedule established, the clerk will file the action as of the day it was lodged. If the Prisoner Application is denied, the clerk will inform the prisoner of the decision of the court.
- (3) Dismissal of Claims as Frivolous under 28 U.S.C §1915. On receipt of a Prisoner Application, a magistrate judge may review the complaint and recommend that (i) the Prisoner Application be granted to permit the filing of the action and (ii) that the action be dismissed pursuant to 28 U.S.C. § 1915. If the court accepts the recommendation, the matter will be filed and subsequently closed.

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

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

DUCivR 3-4 CIVIL COVER SHEET

Every complaint or other document initiating a civil action must be accompanied by a Civil Cover Sheet, Form JS-44, available from the clerk. All appeals to this court from rulings of

the bankruptcy court must be accompanied by a Cover Sheet for Appeals from the U.S. Bankruptcy Court to the U.S. District Court, Form DU-28, available from the clerk of court. This requirement is solely for administrative purposes.

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

DUCivR 3-5 CONTENT OF THE COMPLAINT

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

DUCivR 5-1 FILING OF PAPERS

(a) Electronic Filing Permitted.

Papers may be filed, signed, and verified by electronic means consistent with the administrative procedures (ECF Procedures) adopted by the court to govern the court's electronic case filing system. A paper filed by electronic means in compliance with the ECF Procedures constitutes a written paper for the purpose of applying these rules.

(b) Filing of Pleadings and Papers.

Barring extraordinary circumstances, all pleadings and other case-related papers required to be filed with the court must be filed with the clerk at the office of record in Salt Lake City (i) in person during the business hours set forth in DUCivR 77-1, (ii) in the twenty-four (24) hour filing box located on the south porch of the courthouse, (iii) by mail, or (iv) through the court's electronic filing system. At the time of filing of a document pursuant to subparagraphs (i), (ii), and (iii), the clerk will require:

- (1) the original of all proposed orders, certificates of service, and returns of service;
- (2) the original and **one (1)** copy of all pleadings, motions, and other papers; and,

- (3) the original and **two (2)** copies of all pleadings, motions, and other papers pertaining to a matter that has been referred to a magistrate judge.

When court is in session elsewhere in the district, pleadings, motions, proposed orders, and other pertinent papers may be filed with the clerk or with the court at the place where court is being held.

*The ECF Procedures governing electronic filing are available for review, downloading, and printing at <http://www.utd.uscourts.gov>

(c) **Filing Time Requirements.**

Unless otherwise directed by the court, all documents pertaining to a court proceeding must be filed with the clerk a minimum of **two (2) business days** before the scheduled proceeding.

DUCivR 5-2 FILING CASES AND DOCUMENTS UNDER COURT SEAL

(a) **General Rule.**

The records of the court are presumptively open to the public. The court has observed that counsel are increasingly and improperly overdesignating sealed materials in pleadings and documents filed with the court. In order to prevent such overdesignating, the court is now requiring counsel to be highly selective in filing documents under seal. A portion of a document or portion of a pleading shall be filed under seal only if the document or pleading, or portions thereof, are privileged or protectable as a trade secret or otherwise entitled to protection under the law (hereinafter “Sealed Material”). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. To prevent the overdesignating of sealed materials in the court record, counsel shall:

- (1) Refrain from filing memoranda under seal merely because the attached exhibits contain confidential information;
- (2) Redact personal identifiers, discussed in DuCivR 5.2-1, and not use the presence of personal identifiers as a basis for sealing an entire document; and
- (3) Redact documents when the confidential portions are not directly pertinent to the issues before the court and publicly file the documents.

The court recognizes that on rare occasions, statutes, rules, and orders in specific cases may require restriction of public access. On motion of a party and a showing of good cause, a judge may order a case, a document, or a portion of a document filed in a civil case to be sealed.

(b) Sealing of New Cases.

- (1) On Ex Parte Motion. In extraordinary circumstances, and upon a judge's order granting an ex parte motion of the plaintiff or petitioner, an entire case may be sealed at the time it is filed.
- (2) Civil Actions for False Claims. When an individual files a civil action on behalf of the individual and the government pursuant to 31 U.S.C. § 3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.

(c) Sealing of Pending Cases.

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

(d) Procedure for Filing Documents Under Seal.

Documents ordered sealed by the court or otherwise required to be sealed by statute must be delivered to the court for filing in the following manner:

- (1) Original Document. The original document must be unfolded in an envelope with a copy of the document's cover page affixed to the outside of the envelope. The cover page must include a notation that the document is being filed under court seal and must indicate one of the following reasons why the document has been filed under seal:
 - (A) it is accompanied by a court order sealing the document;
 - (B) it is being filed in a case that the court has ordered sealed; or
 - (C) the document contains Sealed Material.

Any exhibits filed must include a paper index to the exhibits, including the title (description) of the exhibit and the exhibit number.

- (2) CD-ROM. The sealed filing must be accompanied by a CD-ROM (or other tangible electronic media) containing a PDF version of each document filed,

including exhibits and the index of exhibits. The CD-ROM shall be placed in the same envelope as the original document and shall be marked with the case name, case number, and the date of delivery,

- (3) Courtesy Copies. Courtesy copies of both the document and the CD-ROM, prepared in the manner described above, shall be delivered at the same time as the originals. Individual chambers may also notify counsel that an electronic version of the sealed document shall be delivered to chambers via email or other method of secured electronic delivery.
- (4) Notice of Conventional Filing. When a sealed document is delivered to the court, the filer shall electronically file a “Notice of Conventional Filing.”

(e) **Filing Memoranda That Contain Sealed Material**

- (1) Two Versions of Memorandum Must Be Filed. If a party refers in a memorandum to Sealed Material, two versions of the memorandum must be filed with the court: a confidential, sealed memorandum and a nonconfidential, redacted memorandum.
 - (A) Sealed Memorandum. One memorandum shall be labeled “FILED UNDER SEAL.” The specific confidential material must be highlighted, put in brackets, or otherwise designated as confidential. This memorandum shall be filed as set forth above in 5.2(d).
 - (B) Nonconfidential, Redacted Memorandum. A memorandum from which confidential matter has been redacted shall be labeled “REDACTED-NONCONFIDENTIAL” and electronically filed with the court. The caption of the redacted version of each sealed document and the docket entry created when the document is filed shall identify the title of the sealed document, its docket number, and the date on which the sealed version was filed. The redacted version of the memorandum must be filed within fourteen (14) days of filing the sealed version. Failure to file a redacted version within the time prescribed may result in the court’s unsealing the memorandum.
- (2) Exceptions. Subsection (e)(1) does not apply to:
 - (A) Filings in cases that have been sealed pursuant to statute or court order; or

- (B) A memorandum that contains such an abundance of confidential information that filing a redacted version of the memorandum would not be meaningful. In this situation, counsel shall file a declaration pursuant to Section(e)(3) below so stating.
- (3) Declaration Required. The lead attorney on the case shall file a declaration certifying that the sealed exhibits, memoranda, and/or other documents are privileged or protectable as a trade secret or otherwise entitled to protection under the law and that the sealed filing has been narrowly tailored to protect only the specific information truly deserving of protection.
- (4) Resolutions of Disputes; Party Seeking Protection Bears Burden.
- (A) If a party intends to refer to and file Sealed Material, and the filing party is unable to ascertain what information was intended to be protected, the filing party shall notify the designating party of the uncertainty, and the parties shall meet and confer so that the protected information may be highlighted as confidential as required in 5.2(e)(1)(A) and then redacted in the publicly filed version as required in 5.2(e)(1)(B).
- (i) If the uncertainty is not resolved by the time the filing is made, the filing party shall:
- (a) file the document(s) under seal;
 - (b) file a certification that the parties attempted to confer in good faith and that a Declaration, as required by 5.2(e)(3), cannot be filed; and
 - (c) file a notice to opposing counsel to prepare a redacted version for the filing party to file in the public docket within fourteen (14) days.
- (ii) If the party seeking protection does not provide to the filing party a redacted version of the memorandum within fourteen (14) days of the filing of the sealed document, the filing party shall file, within seven (7) days, a notice that the court may unseal the document.
- (B) A party who contends that a document was improperly filed under seal may notify the filing party of the contention. The parties shall then meet

and confer. If conferral does not result in agreement, the party challenging the designation may file a Notice of Dispute Regarding Sealed Document(s).

(i) The party to whom the Notice of Dispute is directed must file, within fourteen (14) days of filing date of the notice, a motion to preserve the seal. If no such motion is timely filed, the other party may file a brief motion to remove the seal, attaching the notice given. The motion to remove the seal shall be summarily granted without briefing or hearing. If a motion is timely filed, the opposing side need not respond, unless ordered to do so by the court.

(f) Access to Sealed Cases and Documents.

Unless otherwise ordered by the court, the clerk will provide access to cases and documents under court seal only on court order. Unless otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

DUCivR 5-3 HABEAS CORPUS PETITIONS AND CIVIL RIGHTS COMPLAINTS

(a) Form.

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

(b) Supporting Affidavit.

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

(c) **Filing Requirements.**

Petitioners or movants seeking post-conviction relief must file with the clerk of court the original and one copy of the petition, motion, or complaint. If proceeding without prepayment of fees, petitioners and movants, in addition to the original and any required copies, as prescribed in DUCivR 5-1(a), must provide the clerk with one copy for each person named as a defendant in the petition, motion, or complaint.

(d) **Answers and Responses.**

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

DUCivR 5.2 - 1 REDACTING PERSONAL IDENTIFIERS

(a) **Redacting Personal Identifiers in Pleadings.**

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

(b) **Redacting Personal Identifiers in Transcripts.**

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

- (1) opening and closing statements made on the party's behalf;
- (2) statements of the party;
- (3) the testimony of any witnesses called by the party; and
- (4) any other portion of the transcript as ordered by the court.

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

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

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

DUCivR 6-1 FILING DEADLINES WHEN COURT IS CLOSED

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

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

DUCivR 7-1 MOTIONS AND MEMORANDA

(a) **Motions.**

All motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Copies shall be provided as required by DUCivR 5-1.

(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), 56, and 65 of the Federal Rules of Civil Procedure: Motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, statement of elements and undisputed material facts, and exhibits.

(B) All Other Motions: All motions that are not listed above must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of contents, statement of precise relief sought and grounds for relief, concise introduction and/or background section, statements of issues and facts, and exhibits.

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

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

(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.

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

(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, 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), 56, 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), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, response to the statement of elements and undisputed material facts, any statement of additional elements and/or undisputed material facts, table of exhibits, and exhibits. Reply memoranda must be limited to ten (10) pages, exclusive of face sheet, table of contents, any additional facts, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.
- (B) All Other Motions: Response memoranda related to all motions that are not listed above must not exceed ten (10) pages, exclusive of any of the

following items: face sheet, table of contents, concise introduction, statements of issues and facts, table of exhibits, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages, exclusive of face sheet, table of contents, table of exhibits, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. 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.**

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.²

(d) **Failure to Respond.**

Failure to respond timely to a motion may result in the court's granting the motion without further notice.

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

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

² For summary judgment motions, see DuCivR 56-1(f).

DUCivR 7-2 CITING UNPUBLISHED JUDICIAL DECISIONS

(a) Precedential Value.

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

(b) Citation Form.

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

(c) Copies.

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

DUCivR 7-3 REQUEST TO SUBMIT FOR DECISION

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

DUCivR 7-4 FILINGS IN ALL ACTIONS SEEKING REVIEW OF A DECISION OF THE COMMISSIONER OF SOCIAL SECURITY

(a) **Pleadings.**

Motions for judgment on the pleadings, for reversal or for summary judgment, or to “affirm or review the Commissioner’s decision” are not appropriate and shall not be filed with the court. The parties shall file the following pleadings in accordance with the scheduling order entered in the case:

- (1) Plaintiff shall file, and serve on opposing counsel, an Opening Brief. In the Opening Brief, plaintiff shall set forth the specific errors upon which plaintiff seeks reversal of the Commissioner’s decision.
- (2) Defendant shall file, and serve on opposing counsel, an Answer Brief. In the Answer Brief, defendant shall address the errors identified by plaintiff.
- (3) Plaintiff may file, and serve on opposing counsel, a Reply Brief. In the Reply Brief, plaintiff shall address only those issues raised in defendant’s Answer Brief.

This rule does not preclude the parties from filing other motions they deem proper under the Federal Rules of Civil Procedure.

(b) **Length of Briefs.**

Plaintiff’s Opening Brief and Defendant’s Answer brief must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits. Plaintiff’s Reply Brief must not exceed ten (10) pages. If a Brief is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy Brief must include a statement of the reasons why additional pages 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.

DUCivR 7-5 HYPERLINKS IN COURT FILINGS

(a) **Encouraged and Impermissible Hyperlinks.**

As a convenience for the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. For purposes of this rule, a hyperlink is a reference within an electronically filed document that permits a user to click on the reference so as to be directed to

other content. Standard legal citations must still be used so that those who desire to retrieve referenced material may do so without use of an electronic service.

(1) Encouraged Hyperlinks.

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

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

(2) Permissible Hyperlinks.

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

DUCivR 9-1 ALLOCATION OF FAULT

(a) Allocating Party Filing Requirements.

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

- (1) A description of the factual and legal basis on which fault can be allocated; and
- (2) Information known or reasonably available to the party that identifies the non-party, including name, city and state of residence, and employment. If the identity of the nonparty is unknown, the party shall so state in its filing.

(b) Allocating Party Time Requirements.

The information specified in subsection (a) must be included in the party's responsive pleading if known to the party. Alternatively, it must be included in a supplemental notice filed within a reasonable time after the party discovers the factual and legal basis on which fault can be allocated, but not later than any deadline specified in the scheduling order. Upon motion and good cause shown, the court may permit the party to file the information specified in subsection (a) after the expiration of any deadlines

provided for in this rule, but in no event later than ninety (90) days before the scheduled trial date.

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

DUCivR 10-1 GENERAL FORMAT OF PAPERS

(a) Form of Pleadings and Other Papers.

Except as otherwise permitted by the court or a magistrate judge for institutionalized persons, all pleadings, motions, and other papers:

- (1) presented for filing in person or by mail must be on 8 ½ x 11 inch white paper of good quality, with a top margin of not less than 1½ inch, all other margins of not less than 1 inch, and impression only on one side of the paper. Such originals must be flat and unfolded; or
- (2) transmitted for filing through the court's electronic filing system must conform to the ECF Procedures.

Where required, copies of all originals must be prepared by using a clearly legible duplication process; copies produced via facsimile transmission are not acceptable for filing with the court. Text must be typewritten or plainly printed and double-spaced except for quoted material and footnotes. Exhibits attached to the original of any pleading, motion, or paper shall not be separately tabbed with dividers, but an 8 ½ x 11-inch sheet shall be inserted to separate and identify each exhibit. Judges' copies of pleadings and exhibits may include tabbed dividers for the convenience of chambers. Each page must be numbered consecutively. The top of the first page of each paper filed with the court must contain the following:

Counsel Submitting, e-mail address, and Utah State Bar Number³

Attorney For

³ Pursuant to DUCivR 83-1-3, any changes to this name and contact information must be transmitted immediately to the office of the clerk. Attorneys admitted to practice Pro Hac Vice are not required to include a bar number.

Address

Telephone

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

Name of Case Case No. w/ District Judge Initials

Title of Document

Magistrate Judge's Name (When Applicable)

Proposed orders submitted to the court must comply with DUCivR 54-1. Such orders must be prepared and submitted as separate documents, not attached to or included in motions or pleadings. All documents served or filed after the commencement of a case must include the properly captioned case number. For example:

Central Division Civil Cases 2:11CV0001 DB

Northern Division Civil Cases 1:11CV0001 DB

Central Division Criminal Cases 2:11CR0001 DB

Northern Division Criminal Cases 1:11CR0001 DB

Legend:

2 = Central Division

1 = Northern Division

11 = Calendar Year

CV = Civil Case

CR = Criminal Case

0001 = Consecutive Case Number

DB= Assigned Judge

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

(b) **Font Requirements.**

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

(c) **Examination by the Clerk.**

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

FED. R. CIV. P. 12

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

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

DUCivR 15-1 AMENDED COMPLAINTS

Parties moving under FRCP 15-1 to amend a complaint must attach the proposed amended complaint as an exhibit to the motion for leave to file. A party who has been granted leave to file must subsequently file the amended complaint with the court. The amended complaint filed must be the same complaint proffered to the court, unless the court has ordered otherwise.

DUCivR 16-1 PRETRIAL PROCEDURE

(a) Pretrial Scheduling and Discovery Conferences.

(1) Scheduling Conference. In accordance with Fed. R. Civ. P. 16, except in categories of actions exempted under subsection (A), below, the court, or a magistrate judge when authorized under section (B), below, will enter, by a scheduling conference or other suitable means, a scheduling order.⁴ When a scheduling conference is held, trial counsel should be in attendance and must indicate to the court (i) who trial counsel will be, (ii) their respective discovery requirements, (iii) the potential of the case for referral to the court's ADR program, and (iv) the discovery cutoff date. If counsel cannot agree to a discovery cutoff date, such date will be determined by the district judge or the magistrate judge conducting the conference.

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

- (i) Cases filed by prisoners, including those based on motions to vacate sentence, petitions for writs of habeas corpus, and allegations of civil rights violations;
- (ii) Cases filed by parties appearing pro se or in which all defendants are pro se;
- (iii) Bankruptcy appeals and withdrawals;
- (iv) Forfeiture and statutory penalty actions;
- (v) Internal Revenue Service third-party and collection actions;
- (vi) Reviews of administrative decisions by Executive Branch agencies, including Health and Human Services;
- (vii) Actions to enforce or quash administrative subpoenas;
- (viii) Cases subject to multidistrict litigation;
- (ix) Actions to compel arbitration or set aside arbitration

⁴ Annexed to these rules as Appendix III is the general form for reporting to the court the outcome of the attorneys' planning meeting.

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

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

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

(b) **Magistrate Judge.**

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

(c) **Attorneys' Conference.**

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

(d) **Final Pretrial Conference.**

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

(e) **Pretrial Order.**

At the time of the pretrial conference, the parties will submit to the court for execution a proposed pretrial order previously served on and approved by all counsel. The form of the pretrial order should conform generally to the approved form of pretrial order which is reproduced as Appendix IV to these rules. In the event counsel are unable to agree to a proposed pretrial order, each party will state its contentions as to the portion of the pretrial order upon which no agreement has been reached. The court then will determine a final form for the pretrial order and advise all counsel. Thereafter, the order will control the course of the trial and may not be amended except by consent of the parties

and the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged therein.

DUCivR 16-2 ALTERNATIVE DISPUTE RESOLUTION

(a) Authority.

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

(b) Procedures Available.

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

(c) Cases Excluded from ADR Program.

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

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

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

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

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

(d) Certificate of ADR Election.

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

the court or magistrate judge conducting the initial scheduling conference will consult with the parties whether to order referral of the matter to the program.

(e) **Case Referral Procedure.**

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

(f) **Stay of Discovery.**

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

(g) **ADR Case Administration.**

The administration of all cases referred to the ADR program will be governed by the District of Utah ADR Plan, a copy of which is appended to these rules.

(h) **Supervisory Power of the Court.**

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

(i) **Compliance Judge.**

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

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

- (1) **Complaints.** A complaint alleging that any person or party, including the assigned ADR roster or pro tem member(s) has materially violated a provision of this rule or the ADR Plan shall be submitted to the ADR judge in writing or under oath. Copies of complaints that are reviewed by the ADR judge and not deemed frivolous and dismissed shall be sent by the clerk to all parties to the action and, where appropriate, to the assigned ADR roster or pro tem member(s). Complaints shall neither be filed with the clerk nor submitted to the judge assigned to the case.
- (2) **Confidentiality.** Absent a waiver of confidentiality by all necessary persons, or an order of the court, complaints submitted pursuant to this rule shall not disclose confidential ADR communications.

DUCivR 16-3 SETTLEMENT CONFERENCES

(a) **Authority for Settlement Conferences.**

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

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

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

(c) **Settlement Proceedings.**

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

full settlement authority must be directly available by telephone during the settlement conference.

(d) Confidential Nature of Settlement Proceedings.

The settlement conference will be conducted in such a way as to permit an informal, confidential discussion among counsel, the parties, and the settlement judge. The settlement judge may require settlement memoranda to be submitted either with or without service upon the other parties and counsel participating in the settlement conference, but such memoranda must neither be made a part of the record nor filed with the clerk of court. The settlement judge may not communicate to the trial judge to whom the case has been assigned the confidences of the conference, except to report whether or not the case has been settled. Such report must be made in writing, with copies to the parties and their counsel, within a reasonable time following the conference or within such time as the trial judge may direct. If the case does not settle, no oral or written communication made during the settlement conference may be used in the trial of the case or for any other purpose.

FED. R. CIV. P. 22

INTERPLEADER

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

DUCivR 23-1 DESIGNATION OF PROPOSED CLASS ACTION

(a) **Caption.**

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

(b) **Class Allegation Section.**

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

(c) **Class Action Requisites.**

The class action allegation section shall address the following:

- (1) The definition of the proposed class;
- (2) The size of the proposed class;
- (3) The adequacy of representation by the class representative;
- (4) The common questions of law and fact;
- (5) The typicality of claims or defenses of the class representative;
- (6) The nature of the notice to the proposed class; and
- (7) If proceeding under Fed. R. Civ. P 23(b)(3), the additional matter pertinent to the findings as provided by that subdivision.

(d) **Motion for Certification.**

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

DUCivR 24-1 NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

(a) An Act of Congress.

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

Upon receipt of such notice, the clerk on behalf of the court will file a certificate with the Attorney General

The United States District Court for the District of Utah hereby certifies to the Attorney General of the United States that the constitutionality of an Act of Congress, Title _____, Section _____, United States Code (or other description) is drawn into question the case of _____ v. _____, Case No. _____, to which neither the United States, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(a) of the United States Code, the United States is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

The clerk will send copies of the certificate to the United States attorney for the District of Utah and to the district judge to whom the case is assigned.

(b) A Statute of a State.

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

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

The United States District Court for the District of Utah hereby certifies to the Attorney General of the State of _____, that the constitutionality of Title _____, Chapter _____, Section _____, (or other description) is drawn in question in the case of _____ v. _____, Case No. _____, to which neither the State of _____, nor any of its agencies, officers, or employees, is a party. Under Title 28, section 2403(b) of the United States Code, the State of _____ is permitted to intervene in the case for the presentation of evidence, if admissible, and for argument on the question of constitutionality.

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

DUCivR 26-1 DISCOVERY REQUESTS AND DOCUMENTS

(a) Form of Responses to Discovery Requests.

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

(b) Filing and Custody of Discovery Materials.

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

- (A) all disclosures made under Fed. R. Civ. P. 26(a)(1);
- (B) depositions or notices of taking deposition required by Fed. R. Civ. P.
- (C) interrogatories;
- (D) requests for production, inspection or admission;

- (E) answers and responses to such requests; and,
- (F) certificates of service for any of the discovery materials referenced in (A) through (E).

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

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

DUCivR 26-2 STANDARD PROTECTIVE ORDER AND STAYS OF DEPOSITIONS

(a) Standard Protective Order

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

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

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

(b) Motion for Protective Order and Stay of Deposition

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

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

(a) Informal Conference to Settle Discovery Disputes.

Unless otherwise ordered, the court will not entertain any discovery motion, except those motions brought by a person appearing pro se and those brought under Fed. R. Civ. P. 26(c) by a person who is not a party, unless counsel for the moving party files with the court, at the time of filing the motion, a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Such statement must recite, in addition, the date, time, and place of such consultation and the names of all participating parties or attorneys.

(b) Motions to Compel Discovery.

Motions to compel discovery under Fed. R. Civ. P. 37(a) must be accompanied by a copy of the discovery request, the response to the request to which objection is made, and a succinct statement, separately for each objection, summarizing why the response received was inadequate.

(c) Discovery Motions Before Magistrate Judge.

Motions to compel discovery under Fed. R. Civ. P. 37(a) may be referred to a magistrate judge for hearing or disposition. The magistrate judge has authority to enter appropriate

orders granting such motions and compelling discovery. In addition, the magistrate judge may make such protective order as the court is empowered to make on any motion under Fed. R. Civ. P. 26(c). The magistrate judge, however, may not enter any order which is dispositive of a substantive issue in the case except as permitted by 28 U.S.C. § 636(b)(1)(B) and (C) or § 636(b)(3). The magistrate judge may award expenses, costs, attorneys' fees, or other sanctions under a motion under Fed. R. Civ. P. 37(a). (The provisions of 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72 cover review of magistrate judges' orders.)

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

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

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

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

DUCivR 41-2 DISMISSAL FOR FAILURE TO PROSECUTE

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

DUCivR 42-1 CONSOLIDATION OF CIVIL CASES

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

- (a) arise from substantially the same transaction or event;
- (b) involve substantially the same parties or property;
- (c) involve the same patent, trademark, or copyright;
- (d) call for determination of substantially the same questions of law; or
- (e) for any other reason would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges.

The motion shall be filed in the lower-numbered case and a notice of the motion shall be filed in all other cases which are sought to be consolidated. The motion shall be decided by the judge assigned the lower-numbered case. If the motion is granted, the case will be consolidated into the case with the lowest number.⁵

⁵ Upon consolidation, the consolidated case will be merged with the lower-numbered case, and subsequent docketing will occur in only the lower-numbered case. If a transfer - as opposed to consolidation- is sought, please see DUCivR 83-2(g).

DUCivR 43-1 COURTROOM PRACTICES AND PROTOCOL

(a) Conduct of Counsel.

- (1) Only one (1) attorney for each party may examine or cross-examine a witness, and not more than two (2) attorneys for each party may argue the merits of the action unless the court otherwise permits.
- (2) To maintain decorum in the courtroom, counsel will abide strictly by the following rules:
 - (A) Counsel will stand, if able, when addressing the court and when examining and cross-examining witnesses.
 - (B) Counsel will not address questions or remarks to opposing counsel without first obtaining permission from the court. Appropriate quiet and informal consultations among counsel off the record are permitted as long as they neither delay nor disrupt the proceedings.
 - (C) The examination and cross-examination of witnesses will be limited to questions addressed to the witnesses. Counsel must refrain from making statements, comments, or remarks prior to asking a question or after a question has been answered.
 - (D) In making an objection, counsel must state plainly and briefly the specific ground of objection and may not engage in argument unless requested or permitted by the court to do so.
 - (E) Only one (1) attorney for each party may make objections concerning the testimony of a witness when being questioned by an opposing party. The objections must be made by the attorney who has conducted or is to conduct the examination or cross-examination of the witness.
 - (F) The examination and cross-examination of witnesses must be conducted from the counsel's table or the lectern, except when necessary to approach the witness or the courtroom clerk's desk for the purpose of presenting or examining exhibits.

(b) Exclusion of Witnesses.

On its own motion or at the request of a party, the court may order witnesses excluded from the courtroom so they cannot hear the testimony of other witnesses. This section of

this rule does not authorize exclusion of the following: (i) a party who is a natural person; (ii) an officer or employee of a party that is not a natural person and who is designated as that party's representative by its attorney; or (iii) a person whose presence is shown by a party to be essential to the presentation of the case. Witnesses excluded pursuant to Fed. R. Evid. 615 need not be sworn in advance, but may be ordered not to discuss their testimony with anyone except counsel during the progress of the case. Unless otherwise directed by the court for special reasons, witnesses who have testified may remain in the courtroom even though they may be recalled on rebuttal. Unless otherwise directed by the court upon motion of counsel, witnesses once examined and permitted to step down from the stand will be deemed excused. Counsel are encouraged to make requests for exclusion only when necessary to ensure due process.

(c) **Arguments.**

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

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

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

DUCivR 45-1 PRIOR NOTICE OF SUBPOENA FOR NONPARTY

The notice of issuance of subpoena with a copy of the proposed subpoena that is (i) directed to a nonparty, and (ii) commands production of documents and things or inspection of premises before trial shall be served on each party as prescribed by Fed. R. Civ. P. 45(b)(1). Service under Fed. R. Civ. P. 5(b)(2)(A) shall be made at least five (5) days prior to service of

the subpoena on the nonparty. Service on parties under Fed. R. Civ. P. 5(b)(2)(B), (C) or (D) shall be made at least eight (8) days prior to service of the subpoena on the non party.⁶

DUCivR 47-1 IMPANELMENT AND SELECTION OF JURORS

(a) How Impaneled.

Unless the court otherwise directs, jurors will be impaneled in the following manner. Sufficient names will be drawn from the courtroom wheel to provide for the requisite number of jurors, to allow for the exercise of the number of peremptory challenges to which the parties are entitled (28 U.S.C. § 1870), and for such additional number as may be necessary to replace those successfully challenged for cause.

(b) Requests for Voir Dire Examination.

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

(c) Voir Dire Examination and Exercise of Challenges.

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

⁶ This provision adds a three (3) day period similar to that provided under Fed. R. Civ. P. 6(e) which extends time *after* service.

DUCivR 47-2 COMMUNICATION WITH JURORS

(a) Communications Before or During Trial.

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

(b) Communications After Trial.

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

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

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

DUCivR 51-1 INSTRUCTIONS TO THE JURY

(a) Proposed Jury Instructions.

(1) Submission: Unless the court otherwise orders, proposed jury instructions must be served and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive

additional written requests during the course of the trial. Individual instructions must address only one (1) subject, and the principle of law embraced in any instruction may not be repeated in subsequent instructions.

- (2) Service: Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.
- (3) Format: Unless the court permits the submission of proposed jury instructions in electronic format, such instructions must be submitted in paper.
 - (A) Paper: When submitting proposed instructions on paper, counsel should provide two originals and one copy. In the first original and the copy, each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority. In the second original, each proposed instruction must be without number and citation.
 - (B) Electronic: When submitting proposed instructions electronically, counsel may utilize any means acceptable to the judge to whom the case is assigned. For the court's permanent file, counsel also must submit a paper original in which each proposed instruction must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority.

(b) Ruling on Requests.

Prior to the argument of counsel, the court, in accordance with Fed. R. Civ. P. 51, will inform counsel of the court's proposed rulings in regard to requests for instructions. If any counsel believes that there has not been sufficient information from the court under Fed. R. Civ. P. 51, counsel should call the matter specifically to the attention of the court upon the record prior to final arguments before the jury.

(c) Objections or Exceptions to Final Instructions.

The jury will be instructed orally or in writing as the court may determine. As provided in Fed. R. Civ. P. 51, objections to a charge or objections to a refusal to give instructions as requested in writing must be made by stating such to the court before the jury has retired, but out of the hearing of the jury, specifying (i) the objectionable parts of the

charge or the refused instructions; and (ii) the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel at the bench are invited to indicate to the court informally any corrections or explanations of the instructions that they believe were omitted due to the inadvertence of the court.

FED. R. CIV. P. 52

FINDINGS BY THE COURT; JUDGMENT OF PARTIAL FINDINGS

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

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

(a) Orders in Open Court.

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

(b) Orders and Judgments.

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

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

Except as otherwise directed by the court, in all non-jury cases to be tried, counsel for each party must prepare and lodge with the court, at least two (2) full business days before the day the trial is scheduled to begin, proposed findings of fact and conclusions of law consistent with the theory of the submitting party and the facts expected to be proved.

Proposed findings should be concise and direct, should recite ultimate rather than mere evidentiary facts, and should be suitable in form and substance for adoption by the court should it approve the contentions of the particular party. Proposed findings also will serve as a convenient recitation of contentions of the respective parties, helpful to the court as it hears and considers the evidence and arguments and relates such evidence, or lack of it, to the salient contentions of the parties.

(d) Written Order Required for Voluntary Dismissals.

Dismissal of actions by plaintiff prior to the filing of an answer or dismissal by stipulation of all parties who have appeared in the action, pursuant to Fed. R. Civ. P. 41(a)(1), does not require an order of dismissal from the court. However, for clarity of the record, such dismissal should be evidenced by a court order that is prepared by counsel and submitted to the court or the clerk for signature pursuant to the provisions of section (b) of this rule or DUCivR 77-2 of these rules.

See DUCivR 10-1 for format guidelines on preparing orders.

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

(a) Bill of Costs.

Within fourteen (14) days after the entry of final judgment, the party entitled to recover costs must file a bill of costs on a form available from the clerk of court, a memorandum of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their being disallowed. Proof of service upon counsel of record of all adverse parties must be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided by Fed. R. Civ. P. 54(d).

(b) Objections to Bill of Costs.

Where a party objects to any item in a bill of costs, such objections must be set forth with any supporting affidavits and documentation and must be filed with the court and served

on counsel of record of adverse parties within fourteen (14) days after filing and service of the bill of costs. The party requesting the costs may file a reply to specific objections within seven (7) days of service of the objections.

(c) **Taxation of Costs.**

Where no objections are filed, the clerk will tax the costs and allow such items as are taxable under law. Where objections are filed, a hearing may be scheduled at the discretion of the clerk to review the bill of costs and the objections to it. Costs taxed by the clerk will be included in the judgment or decree.

(d) **Judicial Review.**

Taxation of costs by the clerk is subject to review by the court when, under Fed. R. Civ. P. 54(d), a motion for review is filed within seven (7) days of the entry on the docket of the clerk's action.

(e) **Attorneys' Fees.**

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

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

Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorneys' fees authorized by law must be filed and served within fourteen (14) days after (i) entry of a judgment or (ii) an appeals court remand that modifies or imposes a fee award. Such motion must conform to the provisions of **Error! Hyperlink reference not valid.** of these rules. The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.

See DUCivR 54-1 for provisions regarding orders, judgments, and findings of fact and conclusions of law.

**DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING
MEMORANDA**

(a) Summary Judgment Motions and Memoranda; Length and Filing Times.

A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction. Filing times and length of memoranda are governed by DUCivR 7-1.

(b) Motion; Elements and Undisputed Material Facts; and Background Facts.

A motion for summary judgment must include the following sections:

- (1) An introduction summarizing why summary judgment should be granted;
- (2) A section entitled "Statement of Elements and Undisputed Material Facts" that contains the following:
 - (A) Each legal element required to prevail on the motion;
 - (B) Citation to legal authority supporting each stated element (without argument);⁷
 - (C) Under each element, a concise statement of the material facts necessary to meet that element as to which the moving party contends no genuine issue exists. Only those facts that entitle the moving party to judgment as a matter of law should be included in this section. Each asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).
- (3) An argument section explaining why under the applicable legal principles the asserted undisputed facts entitle the party to summary judgment.

The motion may, but need not, include a separate background section that contains a concise statement of facts, *whether disputed or not*, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the

⁷ **ADVISORY COMMITTEE NOTE:** The purpose of the Statement of Elements and Undisputed Material Facts and the corresponding section in the memorandum in opposition to a motion for summary judgment is to distill the relevant legal issues and material facts for the court while reserving arguments for the respective argument sections of the motion and opposition memorandum.

introduction and may, but need not, cite to evidentiary support. The motion may also include a concise conclusion explaining the relief requested.

(c) **Memorandum in Opposition; Response to Elements and Facts; and Background Facts.**

A memorandum in opposition to a motion for summary judgment must include the following sections:

- (1) An introduction summarizing why summary judgment should be denied;
- (2) A section entitled "Response to Statement of Elements and Undisputed Material Facts" that contains the following:
 - (A) A concise response to each legal element stated by the moving party. If the non-moving party agrees with a stated element, state "agreed" for that element. If the party disagrees with a stated element, state what the party believes is the correct element and provide citation to legal authority supporting the party's contention (without argument). If the non-moving party agrees that any stated element has been met, so state.
 - (B) A response to each stated material fact. Under each element that a party disputes as having been met, restate each numbered paragraph from the statement of material facts provided in support of that element in the motion. If a fact is undisputed, so state. If a fact is disputed, so state and concisely describe and cite with particularity the evidence on which the non-moving party relies to dispute that fact (without legal argument).⁸
 - (C) A statement of any additional material facts, if applicable. If additional material facts are relevant to show that an element has not been met or that there is a genuine issue for trial, state each such fact separately in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).
 - (D) A statement of additional elements and material facts, if applicable. If there are additional legal elements not stated by the moving party that the

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

non-moving party contends preclude summary judgment, state each such element along with citation to legal authority that supports the element (without argument) and any additional material facts that create a genuine issue for trial on these elements. Each additional asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

- (3) An argument section explaining why, under the applicable legal principles, summary judgment should be denied.

The opposition may, but need not, include a separate background section that contains a concise statement of facts, whether disputed or not, for the limited purpose of providing background and context for the case, dispute, and motion. This section may follow the introduction and may, but need not, cite to evidentiary support. The memorandum may also provide a concise conclusion.

For the purpose of summary judgment, all material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the movant's statement of material facts will be deemed admitted unless specifically controverted by the statement of the opposing party identifying and citing to material facts of record meeting the requirements of Fed. R. Civ. P. 56.

(d) Reply .

The moving party may file a reply memorandum consistent with DUCivR 7-1. In the reply, a moving party may only cite 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) Supporting Exhibits to Memoranda.

All evidence offered in support of or opposition to motions for summary judgment must be submitted in a separately filed appendix with a cover page index. The index must list each exhibit by number, include a description or title and, if the exhibit is a document, provide the source of the document. A responding party may object as provided in Fed. R. Civ. P. 56(c)(2). Upon the failure of any responding party to object, the court may assume for purposes of summary judgment only that the evidence proffered would be admissible at trial.

(g) 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.

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

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

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

FED. R. CIV. P. 60
RELIEF FROM JUDGMENT OR ORDER

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

DUCivR 67-1 RECEIPT AND DEPOSIT OF REGISTRY FUNDS

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

Any party seeking to make a Rule 67 deposit, with the exception of criminal cash bail, cost bonds, and civil garnishments, must make application to the court for an order to invest the funds in accordance with the following provisions of this rule.

(b) Provisions for Designated or Qualified Settlement Funds.

- (1) By Motion. Where a party seeks to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the party must identify the deposit as such in a motion for an order to deposit funds in the court's registry. Such motion also must recommend to the court an outside fund administrator who will be responsible for (i) obtaining the fund employer identification number, (ii) filing all fiduciary tax returns, (iii) paying all applicable taxes, and (iv) otherwise coordinating with the fund depository to ensure compliance with all IRS requirements for such funds.
- (2) By Settlement Agreement. Where the parties enter into a settlement agreement and jointly seek to deposit funds into the court's registry to establish a designated or qualified settlement fund under 26 U.S.C. § 468B(d)(2), the settlement agreement and proposed order must (i) identify the funds as such, and (ii) recommend to the court an outside fund administrator whose responsibilities are set forth in subsection (b)(1) of this rule.
- (3) Order of the Court. A designated or qualified settlement fund will be established by the clerk only on order of the court on motion or on acceptance by the court of

the terms of the settlement agreement. The court reserves the authority to designate its own outside fund administrator.

(c) **Deposit of Required Undertaking or Bond in Civil Actions.**

In any case involving a civil action against the State of Utah, its officers, or its governmental entities, for which the filing of a written undertaking or cost bond is required by state law as a condition of proceeding with such an action, the clerk of court may accept an undertaking or bond at the time the complaint is filed in an amount not less than \$300.00. The court may review, fix, and adjust the amount of the required undertaking or bond as provided by law. The court may dismiss without prejudice any applicable case in which the required undertaking or bond is not timely filed.

(d) **Registry Funds Invested in Interest-Bearing Accounts.**

On motion and under Fed. R. Civ. P. 67 or other authority, the court may order the clerk of court to invest certain registry funds in an interest-bearing account or instrument.

Under to this rule, any order prepared for the court's signature and directing the investment of funds into an interest-bearing account or instrument must be limited to guaranteed federal government securities. Such orders also must specify the following:

- (1) the length of time the funds should be invested and whether, where applicable, they should be reinvested in the same account or instrument upon maturity;
- (2) where appropriate, the name(s) and address(es) of the designated beneficiary(ies); and
- (3) such other information appropriate under the facts and circumstances of the case and the requirements of the parties.

(e) **Service Upon the Clerk.**

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

(f) **Deposit of Funds.**

The clerk will take all reasonable steps to deposit funds that have been placed in the custody of the court into the specified accounts or instruments within ten (10) business days after having been served with a copy of the order or stipulation as provided in section (e) of this rule.

(g) **Disbursements of Registry Funds.**

Any party seeking a disbursement of such funds must prepare an order for the court's review and signature and must serve the signed order upon the clerk of court or chief deputy clerk. The order must include the payee's full name, complete street address, and social security number or tax identification number. Where applicable, such orders must indicate whether, when released by the court, the investment instruments should be redeemed promptly, subject to possible early withdrawal penalties, or held until the maturity date.

(h) **Management and Handling Fees.**

All funds -- including criminal bond money deposited at interest -- invested into accounts or instruments that fall under the purview of section (d) of this rule may be subject to routine management fees imposed by the financial institution and deducted at the time the accounts are closed or the instruments redeemed. In addition, pursuant to the provisions of the miscellaneous fee schedule established by the Judicial Conference of the United States and as set forth in 28 U.S.C. § 1914, the clerk of court will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts.

(i) **Verification of Deposit.**

Any party that obtains an order directing, and any parties stipulating to, the investment of funds by the clerk must verify, not later than fifteen (15) days after service of the order as provided by section (e) of this rule, that the funds have been invested as ordered or stipulated.

(j) **Liability of the Clerk.**

Failure of any party to personally serve the clerk of court or chief deputy clerk with a copy of the order or stipulation as specified in section (e), or failure to verify investment of the funds as specified in section (i) of this rule, will release the clerk from any liability for the loss of earned interest on such funds.

DUCivR 69-1 SUPPLEMENTAL PROCEEDINGS

(a) Motion to Appear.

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

(b) Hearing Before Magistrate Judge.

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

(c) Failure to Appear.

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

(d) Fees and Expenses.

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

DUCivR 71A-1 DEPOSITS IN THE COURT REGISTRY

Unless otherwise prohibited by statute, any party seeking to make a Fed. R. Civ. P. 71A(j) deposit in a property condemnation proceeding may do so without a court order by

depositing the funds with the court, subject to the approval of the clerk of court. Unless otherwise stipulated by the parties, such funds will be deposited by the clerk of court into the U.S. Treasury, and any interest earned while the funds are so deposited will accrue to the United States. The parties may request, on written stipulation, that the clerk of court invest the funds in an interest-bearing account or instrument. Under DUCivR 67-1(d), the stipulation must specify the nature of the investment, and the parties must serve a copy of the stipulation personally upon the clerk of court or the chief deputy clerk.

DUCivR 72-1 MAGISTRATE JUDGE AUTHORITY

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

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

(a) General Authority.

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

- (1) grant applications to proceed without prepayment of fees;
- (2) authorize levy, entry, search, and seizure requested by authorized agents of the Internal Revenue Service under 26 U.S.C. § 6331 upon a determination of probable cause;
- (3) conduct examinations of judgment debtors and other supplemental proceedings in accordance with Fed. R. Civ. P. 69;
- (4) authorize the issuance of postjudgment collection writs pursuant to the Federal Debt Collection Act;

- (5) conduct initial scheduling conferences under Fed. R. Civ. P. 16, enter stipulated scheduling orders, and grant or deny stipulated motions to amend scheduling orders; and
- (6) conduct all pretrial proceedings contemplated by 28 U.S.C. §636(b) and Fed. R. Civ. P. 72 in cases assigned to them under General Order 11-001.

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

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

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

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

- (1) for injunctive relief including temporary restraining orders and preliminary and permanent injunctions,
- (2) for judgment on the pleadings;
- (3) for summary judgment;
- (4) to dismiss;
- (5) under Fed. R. Civ. P. 12(b);
- (6) for default judgments; and
- (7) for judicial review of administrative agency decisions, including benefits under the Social Security Act, and awards or denials of licenses or similar privileges.

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

(d) Authority Under 42 U.S.C. § 1983.

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

- (1) review prisoner suits for deprivation of civil rights arising out of conditions of confinement, issue preliminary orders as appropriate, conduct evidentiary hearings or other proceedings as appropriate, and prepare for submission to the court appropriate reports containing proposed findings of fact and recommendations for disposition of the matter;
- (2) take depositions, gather evidence, and conduct pretrial conferences;
- (3) conduct periodic reviews of proceedings to ensure compliance with prior orders of the court regarding conditions of confinement, and
- (4) review prisoner correspondence.

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

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

(f) **Authority to Function as Special Master.**

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

(g) **Authority to Adjudicate Civil Cases.**

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

**DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL
DECISION**

(a) **Stays of Magistrate Judge Orders.**

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

(b) **Ruling on Objections.**

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

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

(a) **Office of Record.**

The court's office of record is located in the Frank E. Moss United States Courthouse at 350 South Main Street, Salt Lake City, Utah 84101.

(b) **Hours and Days of Business.**

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

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

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

- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day, December 25

For the convenience of persons who are not registered to file electronically, the court maintains a seven (7) day, twenty-four (24) hour filing box at the south Main Street entrance to the Frank E. Moss United States Courthouse. The box is equipped with a time/date stamp, and case-related pleadings, motions, proposed orders, and other papers that are stamped and deposited in the box will be filed by the clerk on the time/date they were so stamped and deposited.

(c) **U.S. Courts Law Library.**

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

**DUCivR 77-2 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.

DUCivR 79-1 ACCESS TO COURT RECORDS

(a) **Access to Public Court Records.**

- (1) Access via Internet. Cases filed after May 2, 2005, are available for review electronically via the court's website at <http://www.utd.uscourts.gov>. To access an electronic case file, users must first register for Public Access to Court Electronic Records (PACER) at <http://pacer.psc.uscourts.gov/register.html>. Lengthy exhibits, transcripts of court proceedings, and other supporting

documents may be accessible only in paper format at the office of the clerk of court. Some cases filed prior to May 2, 2005, also may be accessible electronically through PACER. PACER users are subject to a modest per-page charge for case information that is downloaded.

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

(b) **Sealed or Impounded Records.**

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

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

(c) **Search for Cases by the Clerk.**

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

DUCivR 81-1 SCOPE AND APPLICABILITY OF RULES

(a) **Scope of Rules.**

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

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

These rules supersede all previous rules promulgated by the United States District Court or any judge of this court. These rules govern all applicable proceedings brought in the United States District Court. They also apply to all proceedings pending at the time they

take effect, except where, in the opinion of the court, their application is not feasible or would work injustice, in which event the former rules govern.

DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE

(a) Practice Before the Court.

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

(b) Admission to the Bar of this Court.

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

(2) Admissions Procedure. (A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee. (B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made. (C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to [sections \(a\)](#) and [\(d\)](#) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge. (D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:

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

professional conduct adopted by the United States District Court for the District of Utah."

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

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

(c) **Active Member Status Requirement.**

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

(d) **Admission Pro Hac Vice.**

Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:

(1) Application and Fee. Applicants must complete and submit to the clerk an [application form](#) available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee, self-certification of good standing in the bar of the highest court of another state or the District of Columbia and the applicant's agreement to read and comply with the Utah Rules of Professional Conduct and the Utah Standards of Professionalism and Civility. Pursuant to the Judicial Conference Schedule of Fees, nonresident United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the

District of Utah, the Federal Public Defender or other federal agency is recused from the case, the associate local counsel requirement is waived.

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

(3) Revocation of Pro Hac Vice Admission.

Any judge of the court may revoke the admission of an attorney who has been admitted Pro Hac Vice for good cause shown, including but not limited to, violation of the rules of this court or failure to comply with court orders. An attorney admitted Pro Hac Vice may not continue to appear Pro Hac Vice without associated local counsel if the associated local counsel withdraws from the representation.

(e) **Attorneys for the United States**.

Attorneys representing the United States government or any agency or instrumentality thereof, including the Federal Public Defender's Office, and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys and resident attorneys representing agencies of the government and resident assistant Federal Public Defenders will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorney" by the United States Attorney for the District of Utah or "Special Attorney" by the Attorney General of the United States, and (ii) are members in good standing of the highest court of any state or the District of Columbia, may be admitted on motion to practice in this court without

payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

(f) **Pro Se Representation.**

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

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

All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules, with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court. The court adopts the Utah Standards of Professionalism and Civility ([Appendix V](#)) to guide attorney conduct in cases and proceedings in this court.

DUCivR 83-1.2 ATTORNEYS - REGISTRATION OF ATTORNEYS

(a) **General Requirement.**

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

- (1) having read and being familiar with the District Court Rules of Practice, the Utah Rules of Professional Conduct, and the Utah Standards of Professionalism and Civility; and
- (2) being a member in good standing of the Utah State Bar and the bar of this court.

(b) **Categories of Membership.**

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

- (1) **Active Membership.** All attorneys who practice in this court are required to maintain their membership in the court's bar in active status. Such status must be

renewed annually and requires payment of a registration fee except where specifically exempted by this rule.

- (2) **Inactive Membership.** Attorneys who wish to remain a member of the bar of the court but who have retired or no longer practice in this court may maintain their membership in inactive status by so notifying the clerk in writing. Attorneys filing such notice are be ineligible to practice in this court until reinstated to active status under such terms as the court may direct.
- (3) **Exemptions.** Judges who are barred by law or rule from the practice of law are exempt from payment of the registration fee for active membership status.

(c) **Non-Member Status.**

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

(d) **Failure to Register.**

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

DUCivR 83-1.3 ATTORNEYS - APPEARANCES BY ATTORNEYS

(a) **Attorney of Record.**

The filing of any pleading, unless otherwise specified, will constitute an appearance by the person who signs such pleading, and such person will be considered counsel of record, provided the attorney has complied with the requirements of DUCivR 83-1.1, or party appearing pro se in that matter. If an attorney's appearance has not been established

previously by the filing of papers in the action or proceeding, such attorney must file with the clerk a notice of appearance promptly upon undertaking the representation of any party or witness in any court or grand jury proceedings. The form of such notice must follow the example included in these rules as Appendix VI. An attorney of record will be deemed responsible in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution in the case.

(b) **Limited Appearance.**

- (1) An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:
 - (A) filing a pleading or other paper;
 - (B) acting as counsel for a specific motion;
 - (C) acting as counsel for a specific discovery procedure;
 - (D) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or
 - (E) any other purpose with leave of the court.
- (2) Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.
- (3) Any party may move to clarify the description of the purpose and scope of the limited appearance.
- (4) A party on whose behalf an attorney enters a limited appearance will continue to receive notice of all filings with the Court and will remain responsible for all matters not specifically described in the Notice.
- (5) An attorney who has entered a notice of limited appearance under this section shall file a notice with the Court informing the Court when the purpose and scope

of the limited appearance have been fulfilled. Failure to do so will constitute the attorney's consent to continue such representation of the party on whose behalf the notice of limited appearance was filed.

(c) **Pro Se Representation.**

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

(d) **Appearance by Party.**

Whenever a party has appeared by an attorney, that party cannot appear or act thereafter in its own behalf in the action or take any steps therein unless an order of substitution first has been made by the court after notice to the attorney of each such party and to the opposing party. However, notwithstanding that such party has appeared or is represented by an attorney, at its discretion the court may hear a party in open court. The attorney who has appeared of record for any party must:

- (1) represent such party in the action;
- (2) be recognized by the court and by all parties to the action as having control of the
- (3) sign all papers that are to be signed on behalf of the client.

(e) **Notification of Clerk.**

In all cases, counsel and parties appearing pro se must notify the clerk's office immediately of any change in address, email address, or telephone number.

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) **Withdrawal Leaving a Party Without Representation.**

- (1) No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except upon submission of:
 - (A) A Motion to Withdraw as Counsel in the form prescribed by the court that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no Notice of Substitution of Counsel has been filed, the client must file a notice of appearance within twenty-one (21) days after entry of

the order, unless otherwise ordered by the court, (iv) notice that pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties;⁹ and

- (B) A proposed Order Granting Motion to Withdraw As Counsel in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.¹⁰
- (2) No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the Motion to Withdraw as Counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes a certification signed by the moving attorney's client indicating that the party is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.
- (3) Withdrawal may not be used to unduly prejudice the non-moving party by improperly delaying the litigation.

⁹ Annexed to these rules as Appendix VIII is the general form of a Motion to Withdraw as Counsel contemplated by this rule.

¹⁰ Annexed to these rules as Appendix IX is the general form of an Order Granting Motion to Withdraw as Counsel contemplated by this rule.

(b) **Withdrawal With and Without the Client's Consent.**

- (1) **With Client's Consent.** Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the motion.
- (2) **Without Client's Consent.** Where the moving attorney has not obtained the written consent of the client, the motion must contain (i) certification that the client has been served with a copy of the motion to withdraw, (ii) a description of the status of the case including the dates and times of any scheduled court proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate, (iii) certification by the moving attorney that the client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw.

(c) **Procedure After Withdrawal.**

- (1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until twenty-one (21) days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the twenty-one (21) day stay period.
- (2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule.
- (3) Within twenty-one (21) days after entry of the order, or within the time otherwise required by the court,
 - (A) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf.
 - (B) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.
- (4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended scheduling order.

(5) An unrepresented party who fails to appear within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(d) Substitution.

Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a Notice of Substitution of Counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be served on all parties; and, (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.

DUCivR-83-1.5 ATTORNEYS - DISCIPLINE OF ATTORNEYS

DUCivR 83-1.5.1 - General Provisions

DUCivR 83-1.5.2 - Reciprocal Discipline

DUCivR 83-1.5.3 - Criminal Conviction Discipline

DUCivR 83-1.5.4 - Referral by a Judicial Officer

DUCivR 83-1.5.5 - Attorney Misconduct Complaint

DUCivR 83-1.5.6 - Committee on the Conduct of Attorneys

DUCivR 83-1.5.7 - Evidentiary Hearing

DUCivR 83-1.5.8 - Reinstatement

DUCivR 83-1.5.1 ATTORNEYS - DISCIPLINARY ACTIONS - GENERAL PROVISIONS

(a) Standards of Professional Conduct.

All attorneys practicing before this court, either as members of the bar of this court by Pro Hac Vice admission, must comply with the rules of practice adopted by this court and with the Utah Rules of Professional Conduct as revised, amended, and interpreted by this court.

(b) **Grounds for Discipline.**

Any attorney who appears in this court or is a member of the bar of the court is subject to the disciplinary jurisdiction of the court. Disciplinary proceedings may be initiated in this court against an attorney who has been:

- (1) disciplined by the Utah State Bar, the Tenth Circuit Court of Appeals, or other jurisdictions;
- (2) convicted of a serious crime, which includes, without limitation, any felony or any misdemeanor which reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney;
- (3) referred for discipline by a judicial officer of the court;
- (4) the subject of an attorney misconduct complaint; or
- (5) otherwise charged with violation of an ethical or professional standard of conduct.

(c) **Disciplinary Panel.**

The Chief Judge will designate three judges as the Disciplinary Panel (Panel) for the court. The Panel members may be active or senior district judges, magistrate judges, or bankruptcy court judges. The Chief Judge will designate one Panel member as Panel Chair. If a Panel member must recuse from a disciplinary matter, the remaining members have authority to proceed without the participation of that judge, and one of them will act as Panel Chair. Further, the Chief Judge may appoint a judge to act as a pro tem member of the Panel.

(d) **Disciplinary Committee.**

The Panel must appoint five members of the court's bar to serve as a Committee on the Conduct of Attorneys and must designate one member to serve as Chair. The members will serve staggered three-year terms and may be reappointed. Members will not be compensated but may be reimbursed for incidental expenses.

(e) **Clerk of Court.**

The clerk will receive attorney discipline complaints and referrals and maintain them in confidential files. If a public disciplinary order is entered, the clerk will transmit the notice thereof to any bar association to which the attorney may belong and to the American Bar Association's National Discipline Data Bank.

(f) **Confidentiality.**

If an attorney has been publicly disciplined by another jurisdiction or convicted of a serious crime as defined in (b) (2), the discipline file will be a public record. The file of other disciplinary matters will remain confidential until the Panel orders the file or parts of the file to be publicly available. All suspension and disbarment orders, including interim suspension orders, shall be distributed to the judges of the court by the clerk of court.

(g) **Waiver and Consent.**

Any attorney who is the subject of an ongoing disciplinary action may file a waiver with the clerk and consent to have discipline entered. An attorney may also, with the approval of the Panel, resign his or her membership in the bar of the court.

(h) **Interim Suspension.**

The Panel may order interim suspension of an attorney who has been convicted of a serious crime or is suspended or disbarred from the Utah State Bar or other jurisdictions pending final adjudication of disciplinary proceedings in this court. In disciplinary matters originating with a judicial referral or private complaint, the Panel may suspend the attorney during the disciplinary process if the attorney's ability to practice in the interim may pose a substantial threat of irreparable harm to the public.

(i) **Reinstatement from Interim Suspension.**

Any attorney under interim suspension for having been convicted of a serious crime as defined in (b) (2) may apply to the Panel for reinstatement upon the filing of a certificate demonstrating that the conviction has been reversed. This reinstatement will not, in and by itself, terminate the pending disciplinary proceeding.

(j) **Participant Immunity.**

Participants in disciplinary proceedings under these rules shall be entitled to the same protections for statements made in the course of the proceedings as participants in judicial proceedings. Committee members, neutral hearing examiner, investigators and attorneys who prosecute complaints shall be immune from suit for conduct committed in the course of their official duties including those undertaken in the investigatory stage. There is no immunity from civil suit for intentional misconduct.

DUCivR 83-1.5.2 RECIPROCAL DISCIPLINE

(a) Notice to the Court.

Any member of the bar of this court who has been disciplined by another jurisdiction must notify the clerk of that discipline by sending a copy of the disciplinary order to the clerk. The clerk may also receive notice of disciplinary action from the disciplining jurisdiction. The clerk will assign the matter a disciplinary case number, review the order, review the attorney's membership status with the court, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

Pursuant to the provisions of DUCiv R 83-1.1 (b)(1) the Chair of the Disciplinary Panel will enter an automatic order of disbarment or suspension upon receipt of notice of an order disbaring or suspending an attorney from the Utah State Bar. The attorney may challenge the discipline by filing a motion and demonstrating good cause as to why the suspension or disbarment should not be imposed in this court.

(b) Procedure.

In cases in which the discipline is imposed by another jurisdiction, the Panel Chair will issue an order to show cause why reciprocal discipline should not be imposed by this court. The clerk must serve the order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel will review any response received from the attorney. The Panel may then

- (1) impose different or no discipline;
- (2) impose reciprocal discipline;
- (3) refer the matter to the Committee for review and recommendations; or
- (4) set the matter for hearing before a neutral hearing examiner, a judicial officer designated by the Chief Judge upon recommendation by the Panel, or before the Panel itself.

Similar discipline will be imposed unless the attorney clearly demonstrates or the Panel finds that the other jurisdiction's procedure constituted a deprivation of due process, the evidence establishing the misconduct warrants different discipline, or the imposition of discipline would result in a grave injustice.

DUCivR 83-1.5.3 CRIMINAL CONVICTION DISCIPLINE

(a) Notice to the Court.

Any member of the bar of this court must notify the clerk of any conviction of a serious crime as defined by DUCivR 83-1.5.1 (b) (2). The clerk may also receive notice of conviction from other sources. The clerk will assign the matter a disciplinary case number, review the conviction, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

(b) Procedure.

The Panel Chair will issue an order to show cause why discipline should not be imposed by this court and a notice that the attorney will be subject to interim suspension under DUCivR 83-1.5.1 (h). The clerk must serve the order to show cause and notice of suspension on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond to the order to show cause.

At the conclusion of the response period for the order to show cause, the Panel shall review any response received from the attorney. The Panel may then

- (1) impose no discipline;
- (2) impose discipline;
- (3) refer the matter to the Committee for review and recommendations; or
- (4) set the matter for hearing before the Panel, a neutral hearing examiner or a judicial officer designated by the Chief Judge upon recommendation by the Panel.

(c) Sanctions.

The Panel may impose sanctions which include but are not limited to

- (1) disbarment;
- (2) suspension;

- (3) imposition of conditions for continuing to practice law in this jurisdiction;
- (4) mandatory continuing legal education;
- (5) public reprimand;
- (6) private reprimand; or
- (7) other discipline as deemed appropriate.

DUCivR 83-1.5.4 REFERRAL BY A JUDICIAL OFFICER

(a) Referral.

A judicial officer may make a referral in writing to the Panel recommending that an attorney be subject to discipline. The referral must be forwarded to the clerk who will assign a disciplinary case number and refer the matter to the Panel chair for review and action pursuant to section (b) of this rule.

(b) Procedure.

The Panel Chair must review the referral with other Panel members. With the concurrence of the Panel members, the Panel Chair must issue an order to show cause why discipline should not be imposed by this court. The clerk will serve the judicial referral and order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel will review any response received from the attorney. The Panel may then

- (1) dismiss the referral;
- (2) impose discipline;
- (3) refer the matter to the Committee for review and recommendations; or
- (4) set the matter for hearing before the Panel, a neutral hearing examiner or a judicial officer designated by the Chief Judge upon recommendation by the Panel.

(c) Sanctions.

The Panel may impose sanctions which include but are not limited to

- (1) disbarment;
- (2) suspension;

- (3) imposition of conditions for continuing to practice law in this jurisdiction;
- (4) mandatory continuing legal education;
- (5) public reprimand;
- (6) private reprimand; or
- (7) other discipline as deemed appropriate.

DUCivR 83-1.5.5 ATTORNEY MISCONDUCT COMPLAINT

(a) Complaint.

Any person with a complaint based upon conduct directly related to practice in this court against an attorney who is either a member of the bar of this court or has been admitted to practice Pro Hac Vice, must sign and submit the complaint in writing and under oath.

The complaint must be in the form prescribed by the court and available from the clerk.

The clerk will review the complaint, review the attorney's membership status, and transmit the matter to the Panel Chair for review and action pursuant to section (b) of this rule.

(b) Procedure.

The Panel will review the complaint and determine whether the complaint should be served or should be dismissed as frivolous or for asserting a claim which is not disciplinary in nature. If the complaint is dismissed, the complainant will be informed by mail. The Panel must issue an order to show cause for other complaints. The clerk will serve the complaint and order to show cause on the attorney by certified mail, return receipt requested, to the attorney at the last known address as found in the court's records. The attorney will have twenty (20) days to respond.

At the conclusion of the response period for the order to show cause, the Panel must review any response received from the attorney. The Panel may then:

- (1) dismiss the complaint;
- (2) impose discipline;
- (3) refer the matter to the Committee for review and recommendations; or
- (4) set the matter for hearing before the Panel, neutral hearing examiner or a judge designated by the Chief Judge upon recommendation by the Panel.

(c) **Sanctions.**

The Panel may impose sanctions which include but are not limited to

- (1) disbarment;
- (2) suspension;
- (3) imposition of conditions for continuing to practice law in this jurisdiction;
- (4) mandatory continuing legal education;
- (5) public reprimand;
- (6) private reprimand; or
- (7) other discipline as deemed appropriate.

DUCivR 83-1.5.6 COMMITTEE ON THE CONDUCT OF ATTORNEYS

(a) **Procedure.**

The Committee Chair will review the original complaint or referral and the response of the attorney. The Chair may then refer the matter to one or more Committee members to investigate and prepare a recommendation to the Committee as a whole.

(b) **Investigation.**

The Committee may request further information from the clerk concerning court records. In addition, the Committee or one or more members of the Committee may contact the complaining party and/or the attorney for further information and can interview persons with information regarding the alleged misconduct.

(c) **Report and Recommendation.**

The Committee must review the recommendation of the investigating member(s) and prepare a report and recommendation to the Panel which may contain recommendations for possible sanctions or for dismissal. The report and recommendation will contain the factual basis for the misconduct allegation and the response of the attorney and other information which has been considered by the Committee. A majority of Committee members must sign the report and recommendation. A member or members of the Committee in the minority may file a dissenting report. The Committee Chair will transmit the report and recommendation and any dissenting reports to the clerk who will serve the attorney and the complaining party, and will also transmit a copy of the report

and recommendation and any dissenting report to the Panel. The attorney may file objections to the report and recommendation within ten (10) days of the date of service.

(d) Recommendation for Evidentiary Hearing.

If the Committee finds that the facts underlying the complaint or referral are in dispute, or that there are questions of law about the application of the ethical standards to the conduct alleged, the Committee may include a recommendation that the matter be referred by the Panel for an evidentiary hearing.

DUCivR 83-1.5.7 EVIDENTIARY HEARING

(a) Appointment of Hearing Examiner.

If the Panel determines that the matter will be best resolved by appointment of a neutral hearing examiner to conduct an evidentiary hearing, the Panel will select a member of the court's bar to conduct the hearing.

(b) Appointment of a Judicial Officer.

If the Panel determines that the matter will be best resolved by the appointment of a judicial officer to conduct a hearing, the Panel will consult with the Chief Judge who will appoint a judicial officer to conduct the hearing.

(c) Appointment of Prosecutor.

The panel may appoint a member of the Committee or another attorney to prosecute the complaint at the hearing.

(d) Panel Hearing.

The Panel may, in an appropriate case, conduct the hearing sitting as a three-judge panel. If the Panel conducts the hearing, the Panel will issue a final order at the conclusion of the hearing.

(e) Hearing Process.

All hearings will be recorded verbatim by electronic or non-electronic means. The examiner or judicial officer may issue subpoenas for witnesses, production of documents, or other tangible things. Testimony will be taken under oath. Disciplinary proceedings are administrative rather than judicial in nature. Accordingly, the Federal Rules of Evidence will not be applicable in the evidentiary hearing unless otherwise ordered by

the hearing examiner or appointed judicial officer. Evidentiary rules that are commonly accepted in administrative hearings will apply. The burden of establishing the charges of misconduct will rest with the prosecutor, who must prove the misconduct by a preponderance of the evidence.

(f) Report and Recommendation.

After the hearing has been concluded, the examiner or judicial officer shall prepare a report including findings of fact and conclusions of law with a recommendation regarding the imposition of sanctions to the clerk who will serve it on the attorney and the complainant and transmit it to the Panel. The attorney may file objections to the report and recommendation within ten (10) days of the date of service. The Panel will enter the final order.

(g) Fees and Costs.

The Panel may authorize payment of attorney's fees and expenses to an investigator or prosecutor or to an appointed hearing examiner. The Panel may tax the costs of disciplinary proceedings under these rules to the attorney subject to discipline or the attorney petitioning for reinstatement. All costs and reimbursements will be deposited in the Court's Bar Fund. Other expenses of disciplinary proceeds may be paid by the clerk from the Court's Bar Fund when approved by the Panel or Chief Judge.

DUCivR 83-1.5.8 REINSTATEMENT

(a) Reinstatement from Reciprocal Discipline Matters.

Reinstatement in this court is not automatic upon reinstatement in the court which initially imposed the discipline. An attorney who has been disciplined under DUCivR 83-1.5.2 may petition the court for reinstatement after having been reinstated by the initial disciplining jurisdiction.

(b) Reinstatement from Other Disciplinary Orders.

An attorney who has been suspended by this court for a period of less than three months must be reinstated upon notification to the clerk that the suspension period is complete. An attorney who has been suspended for a period longer than three months must file a petition for reinstatement and may not practice until the petition has been reviewed and

approved by the Panel. An attorney who has been disbarred may not petition for reinstatement until five years after the effective date of the disbarment.

(c) **Contents of the Petition.**

An attorney seeking reinstatement must demonstrate to the Panel that the conditions for reinstatement have been fully satisfied and that the resumption of the attorney's practice will not be detrimental to the integrity of the bar of this court, the interests of justice, or the public.

(d) **Procedure.**

The Panel will review petitions for reinstatement. If the Panel needs further information, it may refer the petition to the Committee for further investigation. The Committee will proceed as provided in DUCivR 83-1.5.6.

DUCivR 83-1.6 ATTORNEYS - STUDENT PRACTICE RULE

(a) **Entry of Appearance on Written Consent of Client and Supervising Attorney.**

An eligible law student may enter an appearance in any civil or criminal case before this court provided that the client on whose behalf the student is appearing and the supervising attorney have filed a written consent with the clerk.

(b) **Law Student Eligibility.**

An eligible law student must:

- (1) Be enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent graduate of such a school awaiting either (i) the first sitting of the bar examination, or (ii) the result of such examination;
- (2) Have completed legal studies amounting to at least four semesters, or the equivalent if the course work schedule is on some basis other than semesters;
- (3) Be certified in writing by an official of the law school designated by the dean as having the good character, competent legal ability, and necessary qualifications to provide the legal representation permitted by this rule;
- (4) Have a working knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of Professional Conduct, and the District Court Rules of Practice; and

- (5) Neither ask for nor receive any kind of compensation or remuneration from any client on whose behalf the student renders services; however, the student may be paid a set salary or hourly wage by an employing lawyer, law firm, government office, or other entity providing legal services to the extent that the employer does not charge or otherwise seek reimbursement from the client for the services rendered by the student.

(c) **Responsibilities of Supervising Attorney.**

A supervising attorney must:

- (1) Be a member in good standing of the bar of this court;
- (2) Obtain and file with the clerk the prior written consent of the client for the services to be performed by the student in the form provided in Appendix XI to these rules;
- (3) File with the clerk a consent agreement to supervise the student in the form provided in Appendix XII to these rules;
- (4) File with the clerk the law school certification as required by paragraph (b)(3) of this rule and in the form provided in Appendix XIII to these rules;
- (5) Assume personal professional responsibility for the quality of the student's work and be available for consultation with represented clients;
- (6) Guide and assist the student in all activities undertaken by the student and permitted by this rule to the extent required for the proper practical training of the student and the protection of the client;
- (7) Sign all pleadings or other documents filed with the court; the student may also co-sign such documents;
- (8) Be present with the student at all court appearances, depositions, and at other proceedings in which testimony is taken;
- (9) Be prepared to promptly supplement any of the student's oral or written work as necessary to ensure proper representation of the client.

(d) **Scope of Representation.**

Unless otherwise directed by a judge or magistrate judge, an eligible law student, supervised in accordance with this rule, may:

- (1) Appear as assistant counsel in civil and criminal proceedings on behalf of any client, including federal, state or local government bodies provided that the written consent of the client and the supervising attorney and a copy of the dean's certification previously have been filed with the clerk. The consent form necessary for a student to appear on behalf of the United States must be executed by the United States Attorney or First Assistant United States Attorney. The supervising attorney must be present with the student for all court appearances.
- (2) Appear as assistant counsel when depositions are taken on behalf of any client in civil and criminal cases when written consent of the client and the supervising attorney and the dean's certification previously have been filed with the clerk.
- (3) Co-sign motions, applications, answers, briefs, and other documents in civil and criminal cases after their review, approval and signature by the supervising attorney.

(e) **Law School Certification.**

Certification of a student by the law school official must be (i) in the form provided in Appendix XIII to these rules, (ii) filed with the clerk, and (iii) unless sooner withdrawn, remain in effect for twelve (12) months unless otherwise ordered by a judge or magistrate judge. Certification will automatically terminate if the student (i) does not take the first scheduled bar examination following graduation, (ii) fails to achieve a passing grade in the bar examination, or (iii) is otherwise admitted to the bar of this court. Certification of a student may be withdrawn for good cause by the designated law school official.

DUCivR 83-2 ASSIGNMENT AND TRANSFER OF CIVIL CASES

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

(a) **Random Selection Case Assignment System.**

All case assignments are randomly 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.

(b) **Judicial Recusal.**

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

(c) **Emergency Matters.**

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

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

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

(e) **Section 2255 Motions.**

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

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

In the event multiple matters arising out of a single bankruptcy case are filed in this court (whether appeals under DUCivR 83-7.9; referrals of indirect criminal contempt of court under DUCivR 83-7.7; withdrawals of the reference of cases, proceedings or contested matters under DUCivR 83-7.4; or otherwise), the first matter will be randomly assigned to a judge of this court, as set forth in subsection (a) above. Thereafter, any and all subsequent matters arising out of the same bankruptcy case will be assigned to the judge of this court to whom the first matter was assigned.

(g) **Transfer of Related Case**¹¹.

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:

- (i) Whether the cases arise from the same or a closely related transaction or event;
- (ii) Whether the cases involve substantially the same parties or property;
- (iii) Whether the cases involve the same patent, trademark, or copyright;
- (iv) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (v) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges; and
- (vi) Whether there is risk of inconsistent verdicts or outcomes;
- (vii) Whether the motion has been brought for an improper purpose.

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

DUCivR 83-3 CAMERAS, RECORDING DEVICES, AND BROADCASTS

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

¹¹ If a case is transferred to another judge with a similar case, the transferred case will remain a separate case with its own docket and scheduling order. If consolidation—rather than transfer—is sought, please see DUCivR 42-1.

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

DUCivR 83-4 COURT SECURITY

(a) Application of the Rule.

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

(b) Persons Subject to Search.

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

(c) Weapons.

With the exception of weapons carried by the United States marshal, deputy United States marshals, court security officers, or federal protective officers, no weapons other than exhibits will be permitted in any place of holding court in the District of Utah; no other person may bring a weapon other than an exhibit into any place of holding court except as specifically permitted by this rule. The carrying of mechanical, chemical, and other weapons into any place of holding court in the District of Utah is subject to the provisions of the Weapons Policy for the District of Utah as set forth by the Court Security Committee and enforced by the United States marshal. The Weapons Policy is annexed to these rules as Appendix XIV.

(d) **Safety.**

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

DUCivR 83-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

(a) **Prior to Trial.**

- (1) **Marking Exhibits.** Prior to trial, each party must mark all the exhibits it intends to introduce during trial by utilizing exhibit labels in the format prescribed by the clerk of court. Electronic labels are allowed. Plaintiffs must use consecutive numbers; defendants must use consecutive letters. If the number or nature of the exhibits makes standard marking impracticable, the court may prescribe an alternate system and include instructions in the pretrial order.
- (2) **Preparation for Trial.** After completion of discovery and prior to the final pretrial conference, counsel for each party must (i) prepare and serve on opposing counsel a list that identifies and briefly describes all marked exhibits to be offered at trial; and (ii) afford opposing counsel opportunity to examine the listed exhibits. Said exhibits also must be listed in the final pretrial order. Exhibits are part of the public record and personal information should be redacted pursuant FRCiv P 5.2 and DUCiv R 5.2-1.

(b) **During Trial.**

- (1) **Custody of the Clerk.** Unless the court orders otherwise, all exhibits that are admitted into evidence during trial and that are suitable for filing and transmission to the court of appeals as a part of the record on appeal, must be placed in the custody of the clerk of court.
- (2) **Custody of the Parties.** Unless the court otherwise orders, all other exhibits admitted into evidence during trial will be retained in the custody of the party offering them. Such exhibits will include, but not be limited to, the following types of bulky or sensitive exhibits or evidence: controlled substances, firearms,

ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight. With approval of the court, photographs may be substituted for said exhibits once they have been introduced into evidence.

(c) **After Trial.**

- (1) Exhibits in the Custody of the Clerk. Where the clerk of court does take custody of exhibits under [subsection \(b\)\(1\)](#) of this rule, such exhibits may not be taken from the custody of the clerk until final disposition of the matter, except upon order of the court and execution of a receipt that identifies the material taken, which receipt will be filed in the case.
- (2) Removal from Evidence. Parties are to remove all exhibits in the custody of the clerk of court within fourteen (14) days after the mandate of the final reviewing court is filed or, if no appeal is filed, upon the expiration of the time for appeal. Parties failing to comply with this rule will be notified by the clerk to remove their exhibits and sign a receipt for them. Upon their failure to do so within fourteen (14) days of notification by the clerk, the clerk may destroy or otherwise dispose of the exhibits as the clerk deems appropriate.
- (3) Exhibits in the Custody of the Parties. Unless the court orders otherwise, the party offering exhibits of the kind described in [subsection \(b\)\(2\)](#) of this rule will retain custody of them and be responsible to the court for preserving them in their condition as of the time admitted, until any appeal is resolved or the time for appeal has expired.
- (4) Access to Exhibits by Parties. In case of an appeal, any party, upon written request of any other party or by order of the court, will make available any or all original exhibits in its possession, or true copies thereof, to enable such other party to prepare the record on appeal.
- (5) Exhibits in Appeals. When a notice of appeal is filed, each party will prepare and submit to the clerk of this court a list that designates which exhibits are necessary for the determination of the appeal and in whose custody they remain. Parties who

have custody of exhibits so listed are charged with the responsibility for their safekeeping and transportation if required to the court of appeals. All other exhibits that are not necessary for the determination of the appeal and that are not in the custody of the clerk of this court will remain in the custody of the respective party, such party will be responsible for forwarding the same to the clerk of the court of appeals on request.

DUCivR 83-6 STIPULATIONS: PROCEDURAL REQUIREMENT

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

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

Under 28 U.S.C. § 157(a), unless a rule or order of this court expressly provides otherwise, any and all cases under Title 11 and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges for the District of Utah for consideration and resolution consistent with the law. This reference applies to all pending bankruptcy cases and proceedings except those currently before the district court and to all bankruptcy cases and proceedings hereafter filed in the District of Utah.

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

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

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

Personal injury tort and wrongful death claims referred to the bankruptcy court under DUCivR 83-7.1 shall be transferred to the District Court when required under 28 U.S.C. §

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) Motion to Withdraw the Reference.

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

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

(b) Grounds for Withdrawal of the Reference.

A Withdrawal Motion must certify that:

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

(c) Time for Making a Withdrawal Motion.

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

- (2) Adversary Proceedings. An original plaintiff seeking to withdraw the reference of an adversary proceeding must file a Withdrawal Motion with twenty-one (21) days after the proceeding is commenced. An original defendant, intervenor, or an added party, seeking to withdraw the reference of an adversary proceeding, must file a Withdrawal Motion within twenty-one (21) days after entering an appearance in the adversary proceeding. In adversary proceedings that have been removed to the bankruptcy court under 28 U.S.C. § 1452, a removing party seeking to withdraw the reference must file a Withdrawal Motion within twenty-one (21) days after filing the notice of removal; and other parties must file a Withdrawal Motion within twenty-one (21) days after service of notice of removal.
- (3) Contested Matters. In contested matters, the person initiating the contested matter must file a Withdrawal Motion simultaneously with, but separate from, the motion or application initiating the contested matter. Any other person seeking to withdraw the reference of a contested matter must file a Withdrawal Motion simultaneously with the filing of its initial response to the motion or application initiating the contested matter.
- (d) **Transmittal of Withdrawal Motion to District Court and Opening of Miscellaneous Action.**
- (1) Transmittal. Upon the bankruptcy court's entry of a Transmittal Order, the Withdrawal Motion together with the Transmittal Order shall be transmitted to the district court, and notice of the transmittal shall be noted on the bankruptcy court's docket in the case or proceeding.
- (2) Opening of Miscellaneous Action. Upon transmittal, the district court clerk shall open a miscellaneous action. In the miscellaneous action, the party who filed the Withdrawal Motion shall be designated as the Petitioner, and all parties opposing the Withdrawal Motion shall be designated as Respondents. Upon transmittal of the Withdrawal Motion to the district court, all filings related to the Withdrawal Motion, including memoranda in opposition to the Withdrawal Motion and memoranda in reply thereto, shall be made in the district court miscellaneous action and shall be governed by these rules of practice.

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

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

- (1) Conversion of Miscellaneous Action to Civil Action. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall convert the pending miscellaneous action into a civil action, and shall change the caption of the action, such that the title of each party in the civil action is consistent with its title in the bankruptcy court prior to transfer to the district court (*e.g.* plaintiff/defendant; debtor/creditor; movant/respondent, as applicable). The district court clerk shall note on the docket of the civil action that the applicable proceeding or contested matter has been transferred to the district court from the bankruptcy court. Such notation shall also identify the bankruptcy court number of the applicable proceeding which has been transferred from the bankruptcy court; or in the event of a transfer of a contested matter, the notation shall identify the bankruptcy court number of the case from which the contested matter has been transferred.
- (2) Notation on Bankruptcy Court Docket. Upon the entry of an order granting a Withdrawal Motion, the district court clerk shall transmit a copy of such order to the bankruptcy court for filing in the applicable bankruptcy case or proceeding. Upon such transmittal, the clerk of the bankruptcy court shall note on the bankruptcy court docket that the applicable adversary proceeding or contested matter has been transferred to the district court. Such notation shall also identify the district court civil number of the transferred proceeding or contested matter.
- (3) Transfer to District Court. Upon the entry of an order granting a Withdrawal Motion, the applicable proceeding or contested matter shall be deemed transferred to the district court, and all subsequent filings therein shall be made in the district court civil action, bearing the appropriate district court caption and civil number. Upon transfer to the district court, the transferred proceeding or contested matter shall be governed in all respects by these local rules of practice; except that,

unless the district court orders otherwise, all existing deadlines pending at the time of transfer shall remain in effect.

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

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

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

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

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

DUCivR 83-7.6 BANKRUPTCY - LOCAL BANKRUPTCY RULES OF PRACTICE

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

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

DUCivR 83-7.7 BANKRUPTCY - JURY TRIALS IN BANKRUPTCY COURT

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

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

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

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

(a) Applicable Authority.

Appeals to the United States District Court for the District of Utah from the Bankruptcy Court under 28 U.S.C. § 158 must be taken as prescribed in Part VIII of the Fed. R. Bank. P. 8001 et seq., these Local Rules, and the following Local Rules of the U.S. Bankruptcy Appellate Panel of the Tenth Circuit (the “BAP Rules”): 8001-1, 8001-2, 8001-4, 8001-5, 8005-1, 8006-1, 8010-1(c)-(e), 8011-1, 8012-1(c), 8014-1, 8015-1, 8016-6, 8018-1, 8018-4, 8018-9, and 8018-10. The BAP Rules are available at www.bap10.uscourts.gov/rules.php When applying the BAP Rules, any reference therein to the “bankruptcy appellate panel clerk” means the clerk of this Court, and any reference to “this court” means this District Court.

(b) Transmittal Rule.

Upon issuance of the mandate in accordance with BAP Rule 8016-6, as incorporated in these rules by reference in subsection (a) above, a copy of this court’s order or judgment and a copy of any opinion will be transmitted by the clerk of the bankruptcy court.

**(c) Transmission of the Record Under Fed. R. Bank. P. 8007 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 subsections (1) or (2) above, the clerk must open a case, and all documents related to the appeal thereafter shall be filed in that case.
- (4) Supplemental Transmission. After the preliminary transmission has been sent, if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk or the bankruptcy appellate panel clerk, as applicable, must transmit to the clerk a copy of the motion, any order disposing of the motion, and the related docket entries.
- (5) Transmission of the Record. Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bank. P. 8007(b).
- (d) **Filing and Service of Briefs and Appendix Under Fed. R. Bank. P. 8009.**
 - (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, two (2) courtesy copies of any brief and appendix must be provided to the Court upon electronic filing. The courtesy copies of the appendices must be bound or in a binder, and the contents must be tabbed consistent with the appendices and table of contents.

DUCivR 86-1 EFFECTIVE DATE

These rules are effective December 1, 2013.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

LOCAL PATENT RULES

PREAMBLE.....	3
1. SCOPE OF RULES.....	4
LPR 1.1 APPLICATION AND CONSTRUCTION	4
LPR 1.2 INITIAL ATTORNEY PLANNING CONFERENCE AND SCHEDULING ORDERS.....	4
LPR 1.3 FACT DISCOVERY	5
LPR 1.4 CONFIDENTIALITY	6
LPR 1.5 CERTIFICATION OF DISCLOSURES.....	6
LPR 1.6 ADMISSIBILITY OF DISCLOSURES	6
LPR 1.7 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE.....	6
2. PATENT INITIAL DISCLOSURES	7
LPR 2.1 ACCUSED INSTRUMENTALITY DISCLOSURES	7
LPR 2.2 INITIAL DISCLOSURES.....	8
LPR 2.3 INITIAL INFRINGEMENT CONTENTIONS	9
LPR 2.4 INITIAL NON-INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS	11
LPR 2.5 DOCUMENT PRODUCTION ACCOMPANYING INITIAL INVALIDITY CONTENTIONS	12
LPR 2.6 DISCLOSURE REQUIREMENT IN PATENT CASES INITIATED BY COMPLAINT FOR DECLARATORY JUDGMENT.....	12
3. FINAL CONTENTIONS.....	13
LPR 3.1 FINAL INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS	13
LPR 3.2 FINAL NON-INFRINGEMENT CONTENTIONS	13
LPR 3.3 DOCUMENT PRODUCTION ACCOMPANYING FINAL INVALIDITY CONTENTIONS	13
LPR 3.4. AMENDMENT OF FINAL CONTENTIONS	14
LPR 3.5 FINAL DATE TO SEEK STAY	14
4. CLAIM CONSTRUCTION PROCEEDINGS	14
LPR 4.1 EXCHANGE OF PROPOSED CLAIM TERMS TO BE CONSTRUED ALONG WITH PROPOSED CONSTRUCTIONS	14
LPR 4.2 CLAIM CONSTRUCTION BRIEFS	15
LPR 4.3 CLAIM CONSTRUCTION HEARING	17
LPR 4.4 TUTORIAL	17
5. EXPERT WITNESSES	17
LPR 5.1 DISCLOSURE OF EXPERTS AND EXPERT REPORTS.....	17
LPR 5.2 DEPOSITIONS OF EXPERTS.....	18
LPR 5.3 PRESUMPTION AGAINST SUPPLEMENTATION OF REPORTS.....	18
6. DISPOSITIVE MOTIONS.....	18
LPR 6.1 FINAL DAY FOR FILING DISPOSITIVE MOTIONS	18
LPR 6.2 SUMMARY JUDGMENT	19

7. FINAL PRETRIAL CONFERENCE	19
LPR 7.1 NUMBER OF CLAIMS AND PRIOR ART REFERENCES TO BE PRESENTED TO THE FACT FINDER	19

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

LOCAL PATENT RULES

PREAMBLE

These Local Patent Rules provide a standard structure for patent cases that will permit greater predictability and planning for the court and the litigants. These Rules also anticipate and address many of the procedural issues that commonly arise in patent cases. The court's intention is to eliminate the need for litigants and judges to address separately in each case procedural issues that tend to recur in the vast majority of patent cases.

The Rules require, along with a party's disclosures under Federal Rule of Civil Procedure 26(a)(1), meaningful disclosure of each party's contentions and support for allegations in the pleadings. Complaints and counterclaims in most patent cases are worded in a bare-bones fashion, necessitating discovery to flesh out the basis for each party's contentions. The Rules require the parties to provide the particulars behind allegations of infringement, non-infringement, and invalidity at an early date. Because Federal Rule of Civil Procedure 11 requires a party to have factual and legal support for allegations in its pleadings, early disclosure of the basis for each party's allegations will impose no unfair hardship and will benefit all parties by enabling a focus on the contested issues at an early stage of the case. The Rules' supplementation of the requirements of Rule 26(a)(1) and other Federal Rules is also appropriate due to the various ways in which patent litigation differs from most other civil litigation, including its factual complexity; the routine assertion of counterclaims; the need for the court to construe, and thus for the parties to identify, disputed language in patent claims; and the variety of ways in which a patent may be infringed or invalid.

The initial disclosures required by the Rules are not intended to confine a party to the contentions it makes at the outset of the case. It is not unusual for a party in a patent case to learn additional grounds for claims of infringement, non-infringement, and invalidity as the case progresses. After a reasonable period for fact discovery, however, each party must provide a final statement of its contentions on relevant issues, which the party may thereafter amend only "upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment." LPR 3.4.

The Rules also provide a standardized structure for claim construction proceedings, requiring the parties to identify and exchange position statements regarding disputed claim language before presenting disputes to the court. The Rules contemplate that claim construction will be done, in most cases, toward the end of fact discovery. The committee of lawyers and judges that drafted and proposed the Rules considered placing claim construction at both earlier and later spots in the standard schedule. The decision to place claim construction near the end of fact discovery is premised on the determination that claim construction is more likely to be a meaningful process that deals with the truly significant disputed claim terms if the parties have had sufficient time, via the discovery process, to ascertain what claim terms really matter and why and can identify (as the Rules require) which are outcome determinative. The Rules' placement of claim construction near the end of fact discovery does not preclude the parties from proposing or the court from requiring an earlier claim construction in a particular case. This may be appropriate in, for example, a case in which it is apparent at an early stage that the outcome will turn on one claim term or a small number of terms that can be identified without a significant amount of fact discovery.

1. SCOPE OF RULES

LPR 1.1 APPLICATION AND CONSTRUCTION

These Local Patent Rules ("LPR") apply to all cases filed in or transferred to this District after their effective date in which a party makes a claim of infringement, non-infringement, invalidity, or unenforceability of a utility patent. The court may apply all or part of the LPR to any case already pending on the effective date of the LPR. The court may sua sponte or upon motion modify the obligations and deadlines of the LPR based on the circumstances of any particular case when it will advance the just, speedy, and inexpensive determination of the action. If a party files a motion that raises claim construction issues prior to the claim construction proceedings provided for in Section 4 of these Patent Rules, the court may defer ruling on the motion until after entry of the claim construction ruling.

LPR 1.2 INITIAL ATTORNEY PLANNING CONFERENCE AND SCHEDULING ORDERS

The parties shall hold their conference pursuant to Fed. R. Civ. P. 26(f) no later than 35 (thirty-five) days after the filing of the first answer. The parties must discuss and address those

matters found in the form scheduling order contained in LPR Appendix “A.” A completed proposed version of the scheduling order is to be presented to the court no later than seven (7) days after the Rule 26(f) conference unless the court otherwise directs. No later than fourteen (14) days after entry of the claim construction ruling, the parties must file a motion for proposed scheduling order governing the remaining pretrial obligations. A party may request the court enter a separate scheduling order for all non-patent causes of action.

LPR 1.3 FACT DISCOVERY

(a) The parties shall commence fact discovery upon the date for the Initial Attorney Planning Conference under LPR 1.2 and shall complete it twenty-eight (28) days after the date for exchange of claim terms and phrases under LPR 4.1.

(b) No later than fourteen (14) days after entry of the claim construction ruling a party may move to reopen fact discovery. In support of the motion, the moving party shall explain why the claim construction ruling or disclosure of intent to rely on opinions of counsel necessitates further discovery and identify the scope of such discovery.

(c) Discovery Concerning Opinions of Counsel:

- (1) A party shall disclose its intent to rely on advice of counsel and the following information to all other parties no later than seven (7) days after entry of the claim construction ruling:
 - a. All written opinions of counsel and a summary of oral opinions (including the date, the attorney, and recipient) upon which the party will rely;
 - b. All information provided to the attorney in connection with the advice;
 - c. All written attorney work product developed in preparing the opinion that the attorney disclosed to the client; and
 - d. Identification of the date, sender, and recipient of all written and oral communications with the attorney or law firm concerning the subject matter of the advice by counsel.
- (2) The substance of a claim of reliance on advice of counsel offered in defense to a charge of willful infringement, and other information within the scope of a waiver of the attorney-client privilege based upon

disclosure of such advice, is not subject to discovery until seven (7) days after entry of the claim construction ruling.

- (3) After advice of counsel information becomes discoverable under LPR 1.3(b), a party claiming willful infringement may take the deposition of any attorneys preparing or rendering the advice relied upon and any persons who received or claims to have relied upon such advice.
- (4) This Rule does not address whether materials other than those listed in LPR 1.3(c) are subject to discovery or within the scope of any waiver of the attorney-client privilege.

LPR 1.4 CONFIDENTIALITY

DUCivR 26-2 shall govern confidentiality in patent cases. Any party may move the court to modify the Protective Order provided for by DUCivR 26-2 for good cause. The filing of such a motion does not affect the requirement for, or timing of, any of the disclosures required by these Patent Rules.

LPR 1.5 CERTIFICATION OF DISCLOSURES

All disclosures made pursuant to LPR must be dated and signed by counsel of record (or by the party if unrepresented by counsel) and are subject to the requirements of Rules 11 and 26(g), and the sanctions available under Rule 37 of the Federal Rules of Civil Procedure.

LPR 1.6 ADMISSIBILITY OF DISCLOSURES

The contentions provided for in LPR 2.3 and 2.4 are inadmissible as evidence on the merits absent a showing that the disclosures were made in bad faith.

Comment

The purpose of the initial disclosures pursuant to LPR 2.3 – 2.5 is to identify the likely issues in the case, and to enable the parties to focus and narrow their discovery requests. Permitting use of the initial disclosures as evidence on the merits would defeat this purpose. A party may make reference to the initial disclosures for any other appropriate purpose.

LPR 1.7 RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE

Except as provided in this paragraph or otherwise ordered, a party may not object to a discovery request or decline to provide information otherwise required to be disclosed pursuant to FRCivP

26(a)(1) because the discovery request or disclosure requirement is premature in light of or conflicts with these Patent Rules. A party may object to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.CivP.26(a)(1)) on the ground that they are premature under the timetable provided in these Patent Rules. Once parties have made disclosures as required by these Patent Rules, the parties may conduct further discovery on these subjects;

- (a) requests for a party's claim construction position (LPR 4.1);
- (b) requests to the patent claimant for a comparison of the asserted claims and the accused apparatus, device, process, method, act, or other instrumentality (LPR 2.3);
- (c) requests to an accused infringer for a comparison of the asserted claims and the prior art (LPR 2.4-2.5);
- (d) requests to an accused infringer for its non-infringement contentions (LPR 2.4); and
- (e) discovery concerning opinions of counsel (LPR 1.3(c))

Federal Rule of Civil Procedure 26's requirements concerning supplementation of disclosure and discovery responses apply to all disclosures required under these Patent Rules. Federal Rule of Civil Procedure 37 and the related local rules provide the process and consequences for partial or incomplete disclosures under these Patent Rules.

2. PATENT INITIAL DISCLOSURES

Comment

LPR 2.3 – 2.5 supplement the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1). As stated in the comment to LPR 1.6, the purpose of these provisions is to require the parties to identify the likely issues in the case, to enable them to focus and narrow their discovery requests. To accomplish this purpose, the parties' disclosures must be meaningful – as opposed to boilerplate and non- evasive. These provisions should be construed accordingly.

LPR 2.1 ACCUSED INSTRUMENTALITY DISCLOSURES

No later than seven (7) days after the defendant files its answer or other response, a party claiming infringement shall disclose a list identifying each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of the opposing party

of which the party claiming infringement is aware. Each Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process.

LPR 2.2 INITIAL DISCLOSURES

The plaintiff shall provide its initial disclosures under Fed.R.CivP.26(a)(1) (“Initial Disclosures”) no later than twenty-one (21) days after the defendant files its answer or other response; provided, however, if defendant asserts a counterclaim for infringement of another patent, plaintiff’s Initial Disclosures shall be due no later than twenty-one (21) days after the plaintiff files its answer or other response to that counterclaim. The defendant shall provide its Initial Disclosures no later than twenty-eight (28) days after the defendant files its answer or other response; provided, however, if defendant asserts a counterclaim for infringement of another patent, defendant’s Initial Disclosures shall be due no later than twenty-eight (28) days after the plaintiff files its answer or other response to that counterclaim. As used in this Rule, the term “document” has the same meaning as in Fed.R.CivP.34(a):

- (a) A party asserting a claim of patent infringement shall for each asserted patent make available for inspection and copying, or serve control-numbered copies, with its Initial Disclosures the following non-privileged information in the party’s possession, custody or control:
 - (1) all documents concerning any disclosure, sale or transfer, or offer to sell or transfer, any item embodying, practicing or resulting from the practice of the claimed invention or portion of the invention prior to the date of application. Production of a document pursuant to this Rule is not an admission that the document evidences or is prior art under 35 U.S.C. § 102;
 - (2) all documents concerning the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application or a priority date otherwise identified, whichever is earlier;
 - (3) the file history from the U.S. Patent and Trademark Office for each patent on which a claim for priority is based;

- (4) all documents concerning ownership of the patent rights by the party asserting patent infringement;
 - (5) all licenses; and
 - (6) the date from which it alleges damages, if claimed, began to accrue; or, if that date is not known, how the date should be determined.
- (b) A party opposing a claim of patent infringement shall make available for inspection and copying, or serve control-numbered copies, with its Initial Disclosures the following non-privileged information in the party's possession, custody or control:
- (1) documents or things sufficient to show the operation and construction of all aspects or elements of each Accused Instrumentality identified with specificity in the pleading or Accused Instrumentality Disclosures of the party asserting patent infringement;
 - (2) a copy of each item of prior art of which the party is aware and upon which the party intends to rely that allegedly anticipates each asserted patent and its related claims or renders them obvious or, if a copy is unavailable, a description sufficient to identify the prior art and its relevant details;
 - (3) the Accused Instrumentality; and
 - (4) an estimate for the relevant time frame of the quantity of each Accused Instrumentality sold and the gross sales revenue.

LPR 2.3 INITIAL INFRINGEMENT CONTENTIONS

A party claiming patent infringement must serve on all parties "Initial Infringement Contentions" containing the following information no later than thirty-five (35) days after the defendant's Initial Disclosure under LPR 2.2:

- (a) identification of each claim of each asserted patent that is allegedly infringed by the opposing party, including for each claim the applicable statutory subsection of 35 U.S.C. § 271;
- (b) separately for each asserted claim, identification of each Accused Instrumentality of which the party claiming infringement is aware. Each

Accused Instrumentality must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

- (c) a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;
- (d) whether each element of each asserted claim is claimed to be present in the Accused Instrumentality literally or under the doctrine of equivalents. For any claim under the doctrine of equivalents, the Initial Infringement Contentions must include an explanation of each function, way, and result that is alleged to be equivalent and why any differences are not substantial;
- (e) for each claim that is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. If alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;
- (f) for any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;
- (g) the basis for any allegation of willful infringement; and
- (h) if a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own or its licensee's apparatus, product, device, process, method, act, or other instrumentality embodies or practices the claimed invention, the party must identify, separately for each asserted patent, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim, including whether there has been marking pursuant to statute.

Without leave of court, a party claiming patent infringement must limit the allegedly infringed claims to ten (10) per asserted patent. If during discovery a party claiming patent infringement discovers an Accused Instrumentality that was not previously disclosed or known, the party claiming patent infringement may, as required by the Federal Rules of Civil Procedure,

supplement the infringed claims per an asserted patent by withdrawing an equal number of asserted claims and providing the information for the newly asserted claim required by this paragraph 2.3 within fourteen (14) days of discovery, except for good cause shown.

LPR 2.4 INITIAL NON-INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS

Each party opposing a claim of patent infringement or asserting invalidity or unenforceability shall serve upon all parties its “Initial Non-Infringement, Unenforceability and Invalidity Contentions” no later than fourteen (14) days after service of the Initial Infringement Contentions. Such Initial Contentions shall be as follows:

- (a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 2.3(c), that identifies for each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.
- (b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:
 - (1) identification, with particularity, of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent publication shall be identified by its number, country of origin, and date of issue. Every other prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(a)(1) (effective Mar. 16, 2013) or 35 U.S.C. §§ 102(a)–(b) & (g) (2012) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. A challenge to inventorship under 35 U.S.C. § 101 shall identify the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived;
 - (2) a statement of whether each item of prior art allegedly anticipates each asserted claim or renders it obvious. If a combination of items of prior art

allegedly makes a claim obvious, each such combination, and the reasons to combine such items must be identified;

- (3) a chart identifying specifically where, in each alleged item of prior art, each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(f), a description of the claimed function of that element and the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and
 - (4) a detailed statement of any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(b) or lack of enablement or lack of written description under 35 U.S.C. § 112(a).
- (c) Unenforceability contentions shall identify the acts allegedly supporting and all bases for the assertion of unenforceability.

Without leave of court, a party asserting invalidity must limit prior art references to twelve (12) per asserted patent.

LPR 2.5 DOCUMENT PRODUCTION ACCOMPANYING INITIAL INVALIDITY CONTENTIONS

With the Initial Non-Infringement, Unenforceability and Invalidity Contentions under LPR 2.3, the party opposing a claim of patent infringement or asserting invalidity or unenforceability shall supplement its Initial Disclosures and, in particular, must produce or make available for inspection and copying:

- (a) any additional documentation showing the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its LPR 2.4 chart; and
- (b) a copy of any additional items of prior art identified pursuant to LPR 2.3, including for foreign art any translation in the party's possession, custody, or control that does not appear in the file history of the asserted patent(s).

LPR 2.6 DISCLOSURE REQUIREMENT IN PATENT CASES INITIATED BY COMPLAINT FOR DECLARATORY JUDGMENT

In a case initiated by a complaint for declaratory judgment in which a party files a pleading seeking a judgment that a patent is not infringed, is invalid, or is unenforceable, LPR 2.1 and 2.3

shall not apply unless a party makes a claim for patent infringement. If no claim of infringement is made, the party seeking a declaratory judgment must for each declaration for relief being sought comply with LPR 2.4 and 2.5 no later than forty-nine (49) days after the defendant's Initial Disclosures.

3. FINAL CONTENTIONS

LPR 3.1 FINAL INFRINGEMENT, UNENFORCEABILITY AND INVALIDITY CONTENTIONS

A party claiming patent infringement must serve on all parties "Final Infringement Contentions" containing the information required by LPR 2.3 (a)–(h) no later than twenty-one (21) weeks after the due date for service of Initial Infringement Contentions. Each party asserting invalidity or unenforceability of a patent claim shall serve on all other parties, within fourteen(14) days after the Final Infringement Contentions are due, "Final Unenforceability and Invalidity Contentions" containing the information required by LPR 2.4 (b) and (c). Final Infringement Contentions may rely on no more than eight(8) asserted claims, from the set of previously-identified asserted claims, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties. Final Unenforceability and Invalidity Contentions may rely on no more than ten (10) prior art references, from the set of previously-identified prior art references, per asserted patent without an order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties.

LPR 3.2 FINAL NON-INFRINGEMENT CONTENTIONS

Each party asserting non-infringement of a patent claim shall serve on all other parties "Final Non-infringement Contentions" no later than twenty-eight (28) days after service of the Final Infringement Contentions, containing the information called for in LPR 2.4(a).

LPR 3.3 DOCUMENT PRODUCTION ACCOMPANYING FINAL INVALIDITY CONTENTIONS

With the Final Invalidity Contentions, the party asserting invalidity of any patent claim shall produce or make available for inspection and copying: a copy or sample of all prior art identified pursuant to LPR 3.1, to the extent not previously produced, that does not appear in the file history of the patent(s) at issue. If any such item is not in English, an English translation of the portion(s)

relied upon must be produced. The translated portion of the non-English prior art must be sufficient to place in context the particular matter upon which the party relies.

The producing party shall separately identify by control-number which documents correspond to each claim.

LPR 3.4 AMENDMENT OF FINAL CONTENTIONS

A party may amend its Final Infringement Contentions; or Final Non-infringement, or Unenforceability and Invalidity Contentions only by order of the court upon a showing of good cause and absence of unfair prejudice to opposing parties, made no later than fourteen (14) days of the discovery of the basis for the amendment. An example of a circumstance that may support a finding of good cause, absent undue prejudice to the non-moving party, includes a claim construction by the court different from that proposed by the party seeking amendment.

The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

LPR 3.5 FINAL DATE TO SEEK STAY

Absent exceptional circumstances, no party may file a motion to stay the lawsuit pending reexamination or other post-grant proceedings in the U.S. Patent and Trademark Office after the due date for service of the Final Non-infringement Contentions pursuant to LPR 3.2.

4. CLAIM CONSTRUCTION PROCEEDINGS

LPR 4.1 EXCHANGE OF PROPOSED CLAIM TERMS TO BE CONSTRUED ALONG WITH PROPOSED CONSTRUCTIONS

- (a) No later than fourteen (14) days after service of the Final Contentions pursuant to LPR 3.1 and LPR 3.2, each party shall serve a list of (i) the claim terms and phrases the court should construe; (ii) proposed constructions; (iii) identification of any claim element that is governed by 35 U.S.C. § 112(f); and (iv) a description of the function of that element, and the structure(s), act(s), or material(s) corresponding to that element, identified by column and line number of the asserted patent(s).

- (b) No later than seven (7) days after the exchange of claim terms and phrases, the parties must meet and confer and agree upon no more than ten (10) terms or phrases to submit for construction by the court. No more than ten (10) terms or phrases may be presented to the court for construction absent prior leave of court upon a showing of good cause. The assertion of multiple non-related patents shall, in an appropriate case, constitute good cause. If the parties are unable to agree upon ten (10) terms, then five (5) shall be allocated to all plaintiffs and five (5) to all defendants. For each term to be presented to the court, each party must certify in its Cross-Motion for Claim Construction whether a term construction in a party's favor may be dispositive of an issue and explain why.

Comment

In some cases, the parties may dispute the construction of more than ten terms. But because construction of outcome-determinative or otherwise significant claim terms may lead to settlement or entry of summary judgment, in the majority of cases the need to construe other claim terms of lesser importance may be obviated. The limitation to ten claim terms to be presented for construction is intended to require the parties to focus upon outcome-determinative or otherwise significant disputes.

LPR 4.2 CLAIM CONSTRUCTION BRIEFS

- (a) No later than thirty-five (35) days after the exchange of terms set forth in LPR 4.1, the parties shall file simultaneous Cross-Motions for Claim Construction, which may not exceed twenty-five (25) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition.
- (b) On the date for filing the Cross-Motions for Claim Construction, the parties shall file a Joint Appendix containing the patent(s) in dispute and the prosecution history for each patent. The prosecution history must be paginated, contain an index, be text searchable and have each document bookmarked in the PDF filing, and all parties must cite to the Joint Appendix when referencing the materials it contains. Any party may file a separate appendix to its claim construction brief containing other supporting materials. It must be paginated, contain an index, be

text searchable and have each document bookmarked in the PDF filing.

- (c) No later than twenty-eight (28) days after filing of the Cross-Motions for Claim Construction, the parties shall file simultaneous Responsive Claim Construction Briefs, which may not exceed twenty-five (25) pages absent prior leave of court. The briefs shall identify any intrinsic evidence with citation to the Joint Appendix under LPR 4.2(b) and shall separately identify any extrinsic evidence a party contends supports its proposed claim construction. If a party offers a sworn declaration of a witness to support its claim construction, the party must promptly make the witness available for deposition. The brief shall also describe all objections to any extrinsic evidence identified in the Cross-Motions for Claim Construction.
- (d) No reply or surreply briefs shall be filed unless requested by the court.
- (e) The presence of multiple alleged infringers with different products or processes shall, in an appropriate case, constitute good cause for allowing additional pages in the Cross-Motions for Claim Construction or Responsive Claim Construction Briefs or for allowing separate briefing as to different alleged infringers.
- (f) No later than seven (7) days after filing of the Responsive Claim Construction briefs, the parties shall file (1) a joint claim construction chart that sets forth each claim term and phrase addressed in the Cross-Motions for Claim Construction; each party's proposed construction, and (2) a joint status report containing the parties' proposals for the nature and form of the claim construction hearing pursuant to LPR 4.3. The document shall also be submitted to the court in Word Perfect or MS Word format. The chart should include a series of columns listing the complete language of each disputed claim term, each party's proposed claim constructions in separate columns, a column for the court to enter its claim construction and a reference to where the dispute term appears in the asserted patent. "Agreed" entered in the column for the court's construction will indicate agreed claim constructions.

Comment

The committee opted for simultaneous claim construction briefs rather than consecutive briefs, concluding that simultaneous briefing will allow all parties a better opportunity to explain their positions in the most expedient manner. Given the extensive disclosure required under these rules and the requirement to file the Joint Appendix with the Cross-Motions for

Claim Construction, the committee believed all parties would have an understanding of each other's positions prior to briefing.

LPR 4.3 CLAIM CONSTRUCTION HEARING

Concurrent with the filing of the Responsive Claim Construction Briefs, a party shall file a Motion to Set Claim Construction Hearing. Either before or after the filing of Cross-Motions for Claim Construction, the court shall issue an order describing the schedule and procedures for a claim construction hearing. Any exhibits, including demonstrative exhibits, to be used at a claim construction hearing must be exchanged no later than seven (7) days before the hearing.

LPR 4.4 TUTORIAL

No later than fourteen (14) days after the filing of the Responsive Claim Construction Briefs, a party may submit to the court a tutorial summarizing and explaining the technology at issue either in writing or in presentation form such as PowerPoint not to exceed thirty (30) pages, or on DVD not to exceed thirty (30) minutes. The parties may request to provide a live tutorial to the court as part of its submission. No argument shall be permitted in the tutorial. The parties may not rely upon any statement made in the tutorial in other aspects of the litigation. If the court considers an early claim construction in connection with a dispositive motion for summary judgment, a party may submit or the court may require the tutorial to be submitted at that time.

5. EXPERT WITNESSES

LPR 5.1 DISCLOSURE OF EXPERTS AND EXPERT REPORTS

Unless the court orders otherwise,

- (a) expert witness disclosures and depositions shall be governed by this Rule;
- (b) no later than twenty-eight (28) days after entry of the claim construction ruling, each party shall make its initial expert witness disclosures required by Federal Rule of Civil Procedure 26 on issues for which it bears the burden of proof;
- (c) no later than twenty-eight (28) days after the date for initial expert reports, each party shall make its rebuttal expert witness disclosures required by Federal Rule of Civil Procedure 26 on the issues for which the opposing party bears the burden of proof.

(d) Expert Reports Generally:

(1) Every expert report shall begin with a succinct statement of the opinions the expert expects to give at trial.

(2) Unless leave of court is applied for and given, there shall be no expert testimony at trial on any opinion not fairly disclosed in that expert's report.

(3) Unless leave of court is applied for and given, an expert shall not use or refer to at trial any evidence, basis or grounds in support of the expert's opinion not disclosed in the expert's report, except as set forth below.

LPR 5.2 DEPOSITIONS OF EXPERTS

Depositions of expert witnesses shall be completed no later than thirty-five (35) days after exchange of expert rebuttal reports.

LPR 5.3 PRESUMPTION AGAINST SUPPLEMENTATION OF REPORTS

Amendments or supplementation to expert reports after the deadlines provided herein are presumptively prejudicial and shall not be allowed absent prior leave of court upon a showing of good cause that the amendment or supplementation could not reasonably have been made earlier and that the opposing party is not unfairly prejudiced. This rule does not preclude or excuse supplementation required by the Rules of Civil Procedure when there are changes in factual support or legal precedent necessitating such supplementation.

6. DISPOSITIVE MOTIONS

LPR 6.1 FINAL DAY FOR FILING DISPOSITIVE MOTIONS

All dispositive motions shall be filed no later than twenty-eight (28) days after the scheduled date for the end of expert discovery.

Comment

This Rule does not preclude a party from moving for summary judgment at an earlier stage of the case if circumstances warrant. It is up to the trial judge to determine whether to consider an "early" summary judgment motion. See also LPR 1.1 (judge may defer a motion raising claim construction issues until after claim construction hearing is held).

LPR 6.2 SUMMARY JUDGMENT

Whenever construction of a term may be dispositive of an issue, any motion for partial summary judgment on that issue must be filed at the same time the moving party files its Cross-Motion for Claim Construction. See LPR 4. All other dispositive motions shall be filed within the time provided in LPR 6.1. All motions for summary judgment in patent cases subject to these rules must comply with local rule DUCivR 56-1.

7. FINAL PRETRIAL CONFERENCE

LPR 7.1 NUMBER OF CLAIMS AND PRIOR ART REFERENCES TO BE PRESENTED TO THE FACT FINDER

In its final pretrial disclosures, a party asserting infringement shall reduce the number of asserted claims to a manageable subset of previously-identified asserted claims. As a general rule, the court considers a manageable number to be three (3) claims per patent, and ten (10) claims total if more than one patent is being asserted. Except upon a showing of good cause, including principles of proportionality applying to the need for pretrial discovery, a party opposing infringement shall not file a motion to limit the number of asserted claims until the later of resolution of dispositive motions or ninety (90) days prior to trial.

In its final pretrial disclosures, a party opposing infringement shall reduce the number of prior art references—and any combinations thereof—to be asserted in support of anticipation or obviousness theories to a manageable subset of previously identified prior art references. As a general rule, a manageable number of references per claim is no more than three (3) references. A party opposing infringement must also identify how these references will be used, i.e., as anticipatory or in combination, against each asserted claim. Absent extraordinary circumstances, a party asserting infringement shall not file a motion to limit the number of asserted prior art references until the later of resolution of dispositive motions or ninety (90) days prior to trial.

APPENDIX A

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

Plaintiff,

v.

Defendant.

**PATENT CASE
SCHEDULING ORDER
AND ORDER VACATING HEARING**

Honorable District Judge

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report (doc # __) filed by counsel. The Court schedules the following matters. The parties may not modify the times and deadlines set forth herein without the approval of the Court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

This Court VACATES the Initial Pretrial Hearing set for _____, at
_____ a.m.

ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED UNLESS EXPRESSLY STATED TO THE CONTRARY

1.	PRELIMINARY MATTERS/DISCLOSURES	DATE
a.	Plaintiff's Accused Instrumentalities disclosure due [LPR 2.1]	[7 days after 1 st answer— Day 7/ Week 1]
b.	Plaintiff's Rule 26(a)(1) initial disclosure due [LPR 2.2]	[Day 21/ Week 3]
c.	Defendant's Rule 26(a)(1) initial disclosure due	[Day 28/

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

- [LPR 2.2] Week 4]
- d. Rule 26(f)(1) Conference held and discovery begins [Day 35/
Week 5]
[LPR 1.2, 1.3]
- e. Attorney Planning Meeting Form and Proposed [Day 42/
Week 6]
Scheduling Order submitted [LPR 1.2]
- f. Plaintiff serves Initial Infringement Contentions [LPR [Day 63/
Week 9]
2.3]
- d. Defendant serves Initial Non-Infringement, [Day 77/
Week 11]
Unenforceability, and Invalidity Contentions
If no infringement claims, Plaintiff serves Initial Non-
Infringement, Unenforceability, and Invalidity
Contentions [LPR 2.4, 2.6]
- e. Final Infringement Contentions [LPR 3.1] [Day 210/
Week 30]
- f. Final Unenforceability and Invalidity Contentions [LPR [Day 224/
Week 32]
3.1]
- g. Final Non- Infringement, [LPR 3.2] [Day 238/
Week 34]

2. DISCOVERY LIMITATIONS NUMBER

- a. Maximum Number of Depositions² by Plaintiff(s)
- b. Maximum Number of Depositions³ by Defendant(s)
- c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties)
- d. Maximum Interrogatories⁴ by any Party to any Party
- e. Maximum requests for admissions by any Party to any

² Excluding depositions of experts.

³ Excluding depositions of experts.

⁴ An interrogatory or multiple interrogatories seeking the basis of a party's affirmative defenses, infringement contentions, or invalidity contentions counts as one interrogatory regardless of the number of affirmative defenses alleged or the number of infringed or invalid claims alleged. A party may object to the time of discovery as set forth in LRP 1.7.

Party

f. Maximum requests for production by any Party to any Party

g. The Parties shall handle discovery of electronically stored information as follows:

h. The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

	DATE
i. Deadline to serve written discovery before claim construction [R. 34] :	[Day 250]
j. Close of fact discovery before claim construction [LPR 1.3(a)]:	[Day 280/ Week 40]
k. Disclosure of intent to rely on opinions of counsel and materials in support [LPR 1.3(c)]:	[PCC Day 7/ Week 1]
l. Deadline to file motion for additional discovery [LPR 1.3(b)]:	[PCC Day 14/ Week 2]

3. AMENDMENT OF PLEADINGS/ADDING PARTIES⁵ DATE

a. Last Day to File Motion to Amend Pleadings [Day 112/
Week 16]

b. Last Day to File Motion to Add Parties [Day 112/
Week 16]

4. CLAIM CONSTRUCTION PROCESS DATE

a. Parties exchange proposed claim terms and claim constructions for construction [LPR 4.1(a)] [Day 252/
Week 36]

b. Reach agreement to submit no more than 10 terms for construction [LPR 4.1(b)] [Day 259/
Week 37]

⁵ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

- | | | |
|----|---|------------------------------------|
| c. | Parties file Cross-Motions for Claim Construction and Joint Appendix [LPR 4.2(a) & (b)] | [Day 287/
Week 41] |
| d. | Parties file Simultaneous Responsive Claim Construction Briefs [LPR 4.2(c)] | [Day 315/
Week 45] |
| e. | Joint Claim Construction Chart & Joint Status Report Due [LPR 4.2(f)] | [Day 322/
Week 46] |
| f. | Tutorial for Court [LPR 4.4] | 2:30 p.m.
[Day 329/
Week 47] |
| g. | Parties exchange exhibits [LPR 4.3] | [Day 336/
Week 48] |
| h. | Claim Construction Hearing ⁶ [LPR 4.3] | TBD |

5. EXPERT DISCOVERY

- | | | |
|----|--|--|
| a. | Parties bearing burden of proof [LPR 5.1(b)] | DATE
[PCC Day 28/
Week 4] |
| b. | Counter reports [LPR 5.1(c)] | [PCC Day 56/
Week 8] |
| c. | Close of expert discovery [LPR 5.2] | [PCC Day 91/
Week 13] |

6. DISPOSITIVE MOTIONS

- | | | |
|----|---|--------------------------------------|
| a. | Deadline to file dispositive motions required to be filed with claim construction [LPR 6.2] | DATE
[Day 287/
Week 41] |
| b. | Deadline to file opposition to dispositive motions filed with claim construction [LPR 6.2] | [Day 315/
Week 45] |
| c. | Deadline to file reply to dispositive motions filed with claim | [Day 329/
Week 47] |

⁶ Parties should contact the Court to set the date for the Claim Construction Hearing

d.	construction [LPR 6.2]	[PCC Day 119/ Week 17]
	Deadline for filing dispositive or potentially dispositive motions [LPR 6.1]	
e.	Deadline for filing partial or complete motions to exclude expert testimony	
7.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION/ OTHER PROCEEDINGS	DATE
a.	Referral to Court-Annexed Mediation:	Yes/No
b.	Referral to Court-Annexed Arbitration	Yes/No
c.	Last day to Seek Stay Pending Reexamination [LPR 3.5]	[Day 238/ Week 34]
d.	The parties will complete Private Mediation/Arbitration by:	00/00/00
e.	Evaluate case for Settlement/ADR on	00/00/00
f.	Settlement probability:	

Plaintiff is directed to file a new scheduling order within 14 days of ruling on claim construction. The Court will set trial deadlines in that order or through a case management conference.

8. OTHER MATTERS

Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Claim Construction motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Signed January 14, 2014.

BY THE COURT:

Evelyn J. Furse
U.S. Magistrate Judge

TABLE OF CRIMINAL RULES

<u>RULE #</u>		<u>PAGE</u>
DUCrimR 1-1	SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES	1
DUCrimR 1-2	SANCTIONS FOR CRIMINAL RULE VIOLATIONS	1
DUCrimR 5-1	INITIAL APPEARANCE OF PERSONS UNDER ARREST	1
DUCrimR 5-2	PRETRIAL SERVICES REPORT	1
DUCrimR 6-1	RETURNS OF GRAND JURY INDICTMENTS	2
DUCrimR 9-1	ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS	2
(a)	Summons or Warrant Request Upon Indictment, Information, or Complaint.....	2
(b)	Warrant Upon Failure to Appear.	2
DUCrimR 11-1	PLEA AGREEMENTS.....	2
DUCrimR 12-1	PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS; MOTIONS UNDER THE SPEEDY TRIAL ACT	3
(a)	Timing.....	3
(b)	Form.....	3
(c)	Failure to Respond.....	5
(d)	Oral Argument on Motions.....	5
(e)	Notification of Oral Testimony.....	5
(f)	Motion to Suppress Evidence.....	5
(g)	Certification by Government.....	6
(h)	Preparation and Entry of Order.....	6
(i)	Motions Under the Speedy Trial Act (18 U.S.C. § 3161 et seq.).....	6
DUCrimR 16-1	DISCOVERY	8
(a)	Rules Governing Discovery Motion Practice.....	8
(b)	Alibi Witnesses and Mental Illness Experts.....	8
(c)	Motions Pursuant to Fed. R. Crim. P. 16.....	8
(d)	Motions Not Governed by Fed. R. Crim. P. 16.....	9
(e)	Jencks Act Discovery.....	9
(f)	Discovery Ordered by Pretrial Conference.....	9
(g)	Motions for Protective or Modifying Orders.....	10
(h)	Notification of Compliance.....	10
DUCrimR 16-2	DISCOVERY - SEARCH WARRANTS	10

DUCrimR 17-1	SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS AND APPOINTMENT OF EXPERTS	11
DUCrimR 20-1	TRANSFERS UNDER FED. R. CRIM. P. 20	11
DUCrimR 20-2	TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING	11
DUCrimR 23-1	NUMBER OF JURORS AND ALTERNATES IN CRIMINAL CASES.....	12
(a)	Number of Jurors.	12
(b)	Number of Alternate Jurors.	12
DUCrimR 24-1	IMPANELMENT AND SELECTION OF JURY	12
(a)	Impanelment and Selection of Jury.....	12
(b)	Use of Alternate Jurors.	12
DUCrimR 30-1	INSTRUCTIONS TO THE JURY.....	13
(a)	Written Proposed Jury Instructions.....	13
(b)	Ruling on Requests.	13
(c)	Objections or Exceptions to Final Instructions.....	13
DUCrimR 32-1	PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES	14
(a)	Restrictions on Disclosure of Sentencing Recommendations.	14
(b)	Position Statements.....	14
(c)	Disclosure of Presentence Report.....	14
DUCrimR 40-1	REMOVAL PROCEEDINGS	15
(a)	Notification of Removal.	15
(b)	Delivery of Pertinent Documents.....	15
(c)	Warrant of Removal.....	15
DUCrimR 44-1	RIGHT TO AND ASSIGNMENT OF COUNSEL	16
(a)	Applicability.	16
(b)	Services Essential to a Proper Defense.	16
(c)	Post-Trial Duties of Appointed Attorneys.	17
(d)	Payment of Services.....	17
DUCrimR 44-2	CONSTRAINTS ON JOINT REPRESENTATION	18
(a)	Statement of Policy.	18
(b)	Motion, Hearing, and Order.....	18
DUCrimR 49-1	FILING OF PAPERS.....	19
DUCrimR 49-2	FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL	19
(a)	Filing of Cases Under Seal.	19

	(b)	Filing of Documents Under Seal.....	19
DUCrimR 49.1		REDACTING PERSONAL IDENTIFIERS.....	20
	(a)	Redacting Personal Identifiers in Pleadings.	20
	(b)	Redacting Personal Identifiers in Transcripts.	20
	(c)	Procedure for Reviewing and Redacting Transcripts.	20
DUCrimR 53-1		COURTROOM PRACTICES AND PROTOCOL.....	21
DUCrimR 55-1		ACCESS TO COURT RECORDS	21
DUCrimR 56-1		OFFICE OF RECORD; COURT LIBRARY; HOURS AND DAYS OF BUSINESS.....	21
DUCrimR 57-1		GENERAL FORMAT OF PAPERS	21
DUCrimR 57-2		ASSIGNMENT OF CRIMINAL CASES	21
DUCrimR 57-3		ASSOCIATION AND FILING OF CRIMINAL CASES.....	22
	(a)	Pending Cases Involving Same Defendant.	22
	(b)	Filing of Information Related to New Charges Based on Plea Bargains.....	22
	(c)	Filing Requirements.....	22
DUCrimR 57-4		CRIMINAL CASE PROCESSING	22
	(a)	General Authority.	22
	(b)	Arrest Date Information.....	22
DUCrimR 57-5		CUSTODY AND DISPOSITION OF TRIAL EXHIBITS	23
DUCrimR 57-6		SPECIAL ORDERS IN WIDELY PUBLICIZED CRIMINAL MATTERS.....	23
DUCrimR 57-7		PUBLIC COMMUNICATIONS CONCERNING CRIMINAL MATTERS	23
	(a)	Statement of Policy.....	23
	(b)	Permissible Communications by Attorneys.....	24
	(c)	Impermissible Communications by Attorneys.....	24
	(d)	Sanctions for Rule Violation.....	25
DUCrimR 57-8		COMMUNICATION WITH JURORS	25
DUCrimR 57-9		MOTIONS FOR POST-CONVICTION RELIEF	25
	(a)	Form of Motion.....	25
	(b)	Duties of the Clerk.	25
	(c)	Service Upon the Government.....	25
	(d)	Assignment of Motion to Appropriate District Judge.....	26
	(e)	Discretionary Assignment of Motion to Magistrate Judge.	26
	(f)	Discretionary Hearing.	26
	(g)	Authority for Proceedings.....	26

DUCrimR 57-10	RELIEF FROM STATE DETAINER	26
DUCrimR 57-11	STIPULATIONS	26
DUCrimR 57-12	ATTORNEYS.....	27
DUCrimR 57-13	CAMERAS, RECORDING DEVICES, AND BROADCASTS.....	27
DUCrimR 57-14	COURT SECURITY	27
DUCrimR 57-15	MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES	27
(a)	General Authority.	27
(b)	Criminal Pretrial Authority.	28
(c)	Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters.....	28
(d)	Criminal Trial Authority.	29
(e)	Extradition Proceedings.	29
DUCrimR 57-16	APPEAL OF MAGISTRATE JUDGE ORDERS	29
(a)	Preliminary Criminal Matters.	29
(b)	Stays of Magistrate Judge Orders.	30
(c)	Final Judgments.	30
DUCrimR 58-1	APPEALS FROM MAGISTRATE JUDGE DECISIONS IN MISDEMEANORS AND PETTY OFFENSE CASES.....	30
(a)	Time Frames, Filing, and Service Requirements.....	30
(b)	Page Limitations.	30
(c)	Action by the Court.....	31
DUCrimR 59-1	EFFECTIVE DATE.....	31

DUCrimR 1-1 SCOPE AND AVAILABILITY; AMENDMENTS; PRIOR RULES

These rules apply in all criminal proceedings conducted in the District of Utah. These rules, as amended and with appendices, are made available as specified in DUCivR 1-1(a). Notice of amendments to these rules and opportunity to comment is governed by DUCivR 1-1(b). The relationship of these rules to rules previously promulgated by this court and the application of these rules to criminal proceedings pending at the time they take effect are governed by DUCivR 81-1(b).

DUCrimR 1-2 SANCTIONS FOR CRIMINAL RULE VIOLATIONS

The court, on its own initiative, may impose sanctions for violation of these criminal rules. Sanctions may include, but are not limited to, the assessment of costs, attorneys' fees, fines, or any combination of these, against an attorney or a party.

DUCrimR 5-1 INITIAL APPEARANCE OF PERSONS UNDER ARREST

When the marshal receives custody of any person under arrest, whether charged in this district or elsewhere, the marshal must promptly inform the magistrate judge and the United States attorney's office. The magistrate judge will promptly schedule an appearance of the arrested person.

DUCrimR 5-2 PRETRIAL SERVICES REPORT

Whenever the United States requests the detention of a defendant, or where there is a likelihood that a defendant may be detained, the magistrate judge will request a pretrial services report on the defendant pursuant to 18 U.S.C. § 3154.

DUCrimR 6-1 RETURNS OF GRAND JURY INDICTMENTS

In accordance with Fed. R. Crim. P. 6(f), all grand jury indictments must be returned to a United States district or magistrate judge in open court. The indictments will be filed immediately with the clerk of court, and the defendants will be scheduled to appear before the magistrate judge for arraignment.

DUCrimR 9-1 ISSUANCE OF ARREST WARRANTS ON COMPLAINTS, INFORMATION, AND INDICTMENTS

(a) Summons or Warrant Request Upon Indictment, Information, or Complaint.

When a complaint is filed under Fed. R. Crim. P. 4(a), a summons request may be made either orally or in writing. A summons must be issued upon the filing of an indictment or information unless the government (i) submits to the court a written request for a warrant or (ii) specifically requests no service of process. A warrant request must include a brief statement of the facts justifying the arrest of the defendant. A warrant may be issued on an information only if it is accompanied by a written probable cause statement given under oath.

(b) Warrant Upon Failure to Appear.

If a defendant fails to appear in response to a summons, a warrant must be issued if, prior to issuing the warrant, the assigned district judge or magistrate judge is satisfied either (i) that the defendant received actual notice of the hearing; or (ii) that it is impractical under the circumstances to secure the defendant's appearance by way of summons.

DUCrimR 11-1 PLEA AGREEMENTS

All plea agreements must be in writing and signed by counsel and the defendant. The plea agreement must be accompanied by a written stipulation of facts relevant to a plea of guilty which, if

appropriate, includes the amount of restitution and a list of victims. If the agreement involves the dismissal of other charges or stipulates that a specific sentence is appropriate, the court will review and consider the presentence report before accepting or rejecting the plea agreement. All plea agreements shall be accompanied by a sealed document entitled “Plea Supplement.” The Plea Supplement will be electronically filed under seal.

See [DUCrimR 57-3](#) for filing and consolidation of cases involving plea bargains.

DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS; MOTIONS UNDER THE SPEEDY TRIAL ACT

(a) Timing.

Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than fourteen (14) days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

(b) Form.

- (1) No Separate Supporting Memorandum for Written Motions. 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 motions; and
 - (B) One or more additional sections including a recitation of relevant facts, supporting authority, and argument.
- (2) Affidavits. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits.
- (3) Concise Motions and Memoranda. Motions and memoranda must be concise and state each basis for the motion and limited citations.

- (4) Length of Motions and Memoranda; Filing Times. There are no page limits to motions and memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within fourteen (14) days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.
- (5) 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 letter 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 letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.
- (6) Unpublished Decisions. The use of unpublished decisions in criminal motions and supporting memoranda is governed by DUCivR 7-2.
- (7) 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 state 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; and
 - (C) for motions to suppress unless otherwise directed by the court.

(8) Failure to Comply. Failure to comply with the requirements of this section may result in sanctions that may include returning the motions to counsel for resubmission in accordance with the rule; denial of the motions; or other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section.

(c) **Failure to Respond.**

Failure to respond timely to a motion may result in the court's granting the motion without any further notice.

(d) **Oral Argument on Motions.**

The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time, and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

(e) **Notification of Oral Testimony**

When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.

(f) **Motion to Suppress Evidence.**

A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to

the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.

(g) Certification by Government.

Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

(h) Preparation and Entry of Order.

When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no objections have been filed with the clerk within seven (7) days after service.

(i) Motions Under the Speedy Trial Act (18 U.S.C. § 3161 et seq.).

All motions for extension of time or continuance under the Speedy Trial Act shall state:

(1) the event and date that activated the time limits of the Speedy Trial Act (e.g., “defendant arrested April 1, 2011, indictment or information due within 30 days”; “defendant appeared before United States Magistrate Judge May 1, 2011, jury trial to commence within 70 days”);

(2) the date the act is due to occur without the requested extension or continuance;

(3) whether previous motions for extensions or continuances have been made, the disposition of the motions, and, for any motion that was granted, whether the court found the period of delay resulting from that extension or continuance to be excludable under the Speedy Trial Act;

(4) whether the delay resulting from the requested extension or continuance is excludable under the Speedy Trial Act;

(5) specific reasons for the requested extension or continuance, including why the act cannot be done within the originally allotted time;

(A) If the reason given for the extension is that other litigation presents a scheduling conflict, the motion must also:

(i) identify the litigation by caption, case number, and court;

- (ii) describe the action taken in the other litigation, if any, to request a continuance or deferment;
- (iii) state the reasons why the other litigation should receive priority;
- (iv) state reasons why other associated counsel cannot handle the case in which the extension is being sought or the other litigation; and
- (v) recite any other relevant circumstances.

(B) If an extension is requested due to the complexity of the case, including voluminous discovery, the motion must include specific facts demonstrating such complexity.

(C) If the motion is sought due to some type of personal hardship that counsel or the client will suffer if an extension is not granted, the motion must state the specific nature of that hardship and when the hardship might be resolved;

- (6) an explanation of how the reasons offered in support of the motion justify the length of the extension or continuance that has been requested;
- (7) whether opposing counsel objects to the requested extension or continuance;
- (8) when the motion is made by counsel for the defendant, the motion must indicate whether the defendant agrees with the requested extension or continuance;
- (9) the impact, if any, on the scheduled trial or other deadlines; and
- (10) the precise relief requested by the motion.

If the motion would require divulging trial strategy or information of a highly personal nature, including medical data, the movant may seek leave to file the motion under seal. If trial strategy would be revealed, the motion and request for leave may be presented ex parte. All such motions shall be accompanied by a proposed order for the Court's consideration. The proposed order, which shall not differ in any respect from the relief requested in the motion, shall state specifically the deadline(s) being extended and the new date(s) for the deadline(s) and shall include the findings required under the Speedy Trial Act.

See DUCrimR 49-1, Filing of Papers; DUCrimR 56-1, Office of Record; Court Library; Hours and Days of Business; and DUCrimR 57-1, General Format of Papers.

FED. R. CRIM. P. 13

TRIAL TOGETHER OF INDICTMENTS OR INFORMATION

No corresponding local rule; however, see [DUCrimR 57-3](#) for consolidation of criminal cases.

DUCrimR 16-1 DISCOVERY

(a) Rules Governing 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 fourteen (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 (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 (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 (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 (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.

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 17-1 SEALING OF EX PARTE MOTIONS AND ORDERS IN CRIMINAL JUSTICE ACT CASES RELATING TO TRIAL SUBPOENAS AND APPOINTMENT OF EXPERTS

Unless otherwise directed by the court, the clerk will seal at the time of filing all ex parte motions and orders in Criminal Justice Act (CJA) cases for issuance of trial subpoenas, appointment of experts, authorization of travel, and other extra-ordinary expenses. Copies of such orders, when executed, will be served by the clerk only on the party that made the motion. The clerk will retain such motions and orders under seal until the case proceeds to trial or a judgment is issued.

See [DUCrimR 16-1](#) for discovery ordered by pretrial conference and [DUCrimR 44-1](#) for payment of services.

DUCrimR 20-1 TRANSFERS UNDER FED. R. CRIM. P. 20

Where a criminal case against a named defendant who has not been sentenced is pending in this jurisdiction, and the United States attorney receives notification that a criminal case pending in another jurisdiction against the same defendant is to be transferred to this jurisdiction under Fed. R. Crim. P. 20, the United States attorney must promptly notify the clerk of court. On receiving the case file from the transferring jurisdiction, the clerk will open a new case under the Rule 20 transfer and assign it to the judge to whom the pending case is assigned.

DUCrimR 20-2 TRANSFER TO THE DISTRICT FOR PLEAS OR SENTENCING

When the United States attorney's office receives a request under Fed. R. Crim. P. 20 (b) from any defendant for transfer of a case for prosecution to the District of Utah, the United States attorney's office must promptly notify the clerk and process the transfer documents to ensure prompt transmission of the case to this court. When the clerk of court receives the file from the district of origin, the clerk will open a new case, assign a judge pursuant to DUCrimR 57-2, and deliver the file to the magistrate judge for processing. Thereafter, the magistrate judge will promptly calendar the

case for arraignment to minimize delay. No scheduling order will be entered prior to the transfer of jurisdiction to this court.

DUCrimR 23-1 NUMBER OF JURORS AND ALTERNATES IN CRIMINAL CASES

(a) Number of Jurors.

In all criminal cases, absent a stipulation of the parties to the contrary, the trial jury will consist of twelve (12) members, and the agreement of all twelve (12) members will constitute the verdict of the jury. Although the court may excuse jurors from service during trial or deliberation for good cause, the verdict still must be unanimous, and no verdict may be taken from a jury of fewer than eleven (11) members.

(b) Number of Alternate Jurors.

In all criminal actions tried by a jury, the court may direct that one (1) to six (6) jurors in addition to the regular panel be called and impaneled to sit as alternate jurors.

DUCrimR 24-1 IMPANELMENT AND SELECTION OF JURY

(a) Impanelment and Selection of Jury.

Procedures and requirements regarding the impanelment and selection of a criminal jury are the same as those that apply to a civil jury. They are stated in DUCivR 47-1.

(b) Use of Alternate Jurors.

Alternate jurors in the order in which they are called will replace jurors who, prior to the time the jury retires to consider its verdict, are disqualified from service or, in the judgment of the court, are unable to continue to serve. Alternate jurors will (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, (iv) take the same oath, and (v) have the same functions, powers, facilities, and privileges as principal jurors. Alternate jurors who do not replace principal jurors will be discharged when the jury retires to consider its verdict.

See [DUCrimR 57-8](#) for communications with jurors before, during, and after trial.

FED. R. CRIM. P. 26.2
PRODUCTION OF WITNESS STATEMENTS

No corresponding local rule; however, see [DUCrimR 16-1\(e\)](#) for Jencks Act discovery.

DUCrimR 30-1 INSTRUCTIONS TO THE JURY

(a) Written Proposed Jury Instructions.

Unless the court otherwise orders, two (2) originals and one (1) copy of proposed jury instructions must be prepared, served, and filed with the court a minimum of two (2) full business days prior to the day the case is set for trial. The court in its discretion may receive additional written requests during the course of the trial. One (1) original and one (1) copy of each proposed instruction must (i) be numbered, (ii) indicate the identity of the party presenting the same, and (iii) contain citations of authority. A second original of each proposed instruction must be without number or citation. Individual instructions must embrace one (1) subject only, and the principle of law embraced in any instruction must not be repeated in subsequent instructions. Unless the court otherwise orders, service copies of proposed instructions must be received by the adverse party or parties at least two (2) full business days prior to the day the case is set for trial.

(b) Ruling on Requests.

Prior to the argument of counsel, the court, in accordance with Fed. R. Crim. P. 30, will inform counsel of the court's proposed rulings in regard to requests for instructions. Counsel who believe the court has provided insufficient information under Fed. R. Crim. P. 30 should so inform the court on the record prior to final argument.

(c) Objections or Exceptions to Final Instructions.

The jury may be instructed orally or in writing as the court determines. As provided in Fed. R. Crim. P. 30, objections to a charge or objections to a refusal to give instructions as

requested in writing must be made by informing the court before the jury has retired, but out of the hearing of the jury. Such objections must (i) identify the objectionable parts of the charge or the refused instructions, and (ii) describe the nature and the grounds of objection. Before the jury has left the box, but before formal exceptions to the charge are taken, counsel may alert the court to any corrections to or explanations of the instructions that inadvertently may have been omitted.

DUCrimR 32-1 PRESENTENCE INVESTIGATION REPORTS: TIME, OBJECTIONS, SUBMISSION, RESOLUTION OF DISPUTES

(a) Restrictions on Disclosure of Sentencing Recommendations.

Copies of the presentence report furnished under Fed. R. Crim. P. 32(b)(6) will exclude the probation officer's recommendation.

(b) Position Statements.

After disclosure of the presentence report to the parties, but no later than seven (7) days before sentencing, counsel for the parties must file, in accordance with the United States Sentencing Commission Guidelines Manual, §§ 6A1.2 and 6A1.3, a pleading entitled "Position of Party with Respect to Sentencing Factors." The pleading must be accompanied by a written statement that the party has conferred in good faith with opposing counsel and with the probation officer in an attempt to resolve any disputed matters.

(c) Disclosure of Presentence Report.

Except as otherwise provided by Fed. R. Crim. P. 32(b)(6), presentence reports and confidential records maintained by the United States probation office will not be released except by order of the court.

- (1) Disclosure to Correctional and Treatment Agencies. Probation reports, including the presentence report, may be forwarded routinely to the United States Sentencing Commission, the Federal Bureau of Prisons, federal contract facilities, the United States Parole Commission, courts of appeals and respective parties, as well as other United States probation offices in accordance with federal probation system policies and procedures. The

probation office may prepare a summary of background material in cases for other correctional or treatment agencies and may review the appropriate file with professional staff members from those agencies upon receipt of a Consent to Release Information form signed by the defendant.

- (2) Disclosure in 28 U.S.C. § 2255 Matters. Such reports may be reviewed by the court and authorized court personnel in consideration of matters under 28 U.S.C. § 2255.

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.

(b) **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 U.S. 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.

(c) **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.

FED. R. CRIM. P. 41
SEARCH AND SEIZURE

No corresponding local rule; however, see [DUCrimR 12-1](#) for pretrial motions, responses, memoranda, and proposed orders.

DUCrimR 44-1 RIGHT TO AND ASSIGNMENT OF COUNSEL

(a) Applicability.

This rule applies to any person:

- (1) who is charged with a felony, misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1(3) unless the defendant faces the likelihood of loss of liberty), juvenile delinquency (see 18 U.S.C. § 5034), or a violation of probation;
- (2) who is under arrest, when such representation is required by law;
- (3) who is seeking collateral relief, as provided in subsection (b) of the CJA;
- (4) who is in custody as a material witness (see subsection (g) of the CJA and 18 U.S.C. §§ 3144 and 3142(f));
- (5) who is entitled to appointment of counsel in parole proceedings under 18 U.S.C. Chapter 311;
- (6) whose mental condition is the subject of a hearing under 18 U.S.C. Chapter 313; or
- (7) for whom the sixth amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which such person faces loss of liberty, any federal law requires the appointment of counsel.

(b) Services Essential to a Proper Defense.

The assigned district judge or magistrate judge may authorize an appointed attorney to incur reasonable expenses for the necessary services of an investigator, for a psychiatric

examination of the defendant, or for other services essential to a proper defense. The cost of such additional services must not exceed the authorized statutory maximum. A request to incur such additional expense may be made ex parte to the assigned district judge or magistrate judge by motion or petition, together with an appropriate CJA form. In addition, an order must be issued and signed by the district or magistrate judge before any additional expenses are incurred. The assigned judge also may order that a subpoena be issued on behalf of an indigent defendant under DUCrimR 17-1.

(c) **Post-Trial Duties of Appointed Attorneys.**

The duties of an appointed attorney after the trial include the following:

- (1) the attorney must inform the defendant of the right to appeal;
- (2) if, after consultation with the attorney, the defendant desires to appeal, the attorney must file a notice of appeal, designate the appropriate portions of the record, make all arrangements necessary to order a transcript of needed testimony, and complete all other requirements necessary to perfect the appeal, including making and filing a docketing statement; and,
- (3) if the attorney who represented the defendant at trial wishes to continue to represent the defendant in an appeal, the attorney must notify the clerk of the United States Court of Appeals for the Tenth Circuit and take proper steps to obtain appointment from the court of appeals as counsel for the defendant on appeal.

(d) **Payment of Services.**

An attorney appointed to represent an indigent defendant under the Criminal Justice Act, 18 U.S.C. § 3006A, is responsible for submitting, promptly after the attorney's duties have been terminated, properly completed vouchers and required support documentation on appropriate CJA forms for services rendered by the attorney or others. In cases involving extended services, the court, upon application, may recommend payment in excess of the statutory maximum. All vouchers seeking payments in excess of the statutory maximum must be accompanied by certified time sheets or other evidence setting forth in detail the time spent on

the case. Appointments of attorneys for indigent defendants must be in accordance with the CJA plan for the District of Utah.

DUCrimR 44-2 CONSTRAINTS ON JOINT REPRESENTATION

(a) Statement of Policy.

An attorney, including attorneys who are associated in the practice of law, must avoid a conflict of interest in undertaking representation. In particular, an attorney must avoid a conflict of interest when representing joint defendants, targets of a grand jury investigation, or potential government witnesses in the same criminal matter, whether before or after any formal charges have been filed. Except as provided below, an attorney may not represent more than one defendant or target in the same criminal matter, nor may an attorney represent a defendant or target in a criminal matter if the attorney has represented or is representing individuals who are potential government witnesses in the same matter. An attorney may not represent joint defendants if the attorney, in making a calculation of any applicable sentencing guideline, may be required to contend for differing levels of culpability of the various persons represented.

(b) Motion, Hearing, and Order.

An attorney who intends to represent two or more persons in the same criminal matter with potential conflicts of interest must (i) conform to the provisions of Fed. R. Crim. P. 44(c), and (ii) file with the court a motion and proposed order permitting joint representation. The attorney must certify to the court that, after careful investigation of potential conflicts of interest, it is clear that no actual conflict exists or is foreseeable. The attorney also must file with any motion for such an order a written certification by each person to be represented, giving informed consent to such joint representation and waiving the right to separate representation and, when applicable, waiving the attorney/client privilege. A response to the motion must be filed by the government within ten (10) days. At the subsequent hearing, each defendant, target, or potential government witness subject to or affected by joint representation must be in attendance. The court will deny joint representation where a conflict exists, even if consented to by a defendant, target, or potential government witness, if such representation would be contrary to the interest of justice in the case. The government,

upon becoming aware of a potential conflict of interest in the representation of a criminal defendant, must promptly notify defendant's counsel of the potential conflict. If defendant's counsel does not respond and, if necessary, resolve the conflict after such notification, the government must file a motion to inform the court.

FED. R. CRIM. P. 45

TIME

No corresponding local rule; however, see [DUCrimR 57-4](#) for time limitations and procedural interval processing of criminal cases.

DUCrimR 49-1 FILING OF PAPERS

The filing of pleadings and papers in criminal matters is governed by DUCivR 5-1(a) and (b).

DUCrimR 49-2 FILING CRIMINAL CASES AND DOCUMENTS UNDER COURT SEAL

(a) Filing of Cases Under Seal.

On request of the United States attorney, made at the time a complaint or information is filed or a grand jury indictment is returned, that all or a portion of the documents in a criminal case be sealed, the clerk will seal the case or documents unless the court otherwise directs. Sealed criminal cases will be listed on the clerk's case index as *U.S.A. vs. Sealed Defendant*. Unless otherwise ordered by the court or, upon referral, a magistrate judge on a showing of good cause by the United States attorney or a defendant, sealed cases or documents will be unsealed when the last defendant appears in this district before the magistrate judge.

(b) Filing of Documents Under Seal.

On motion of any party and a showing of good cause, the court may order that all or a portion of the documents filed in a case be sealed. DUCivR 5-2 (c) and (d) governing the procedure for filing documents under seal and access to sealed documents apply in criminal cases. A

district or magistrate judge may order that, in the interests of justice, critical documents in sensitive criminal matters be placed and remain under court seal for extended periods.

DUCrimR 49.1 REDACTING PERSONAL IDENTIFIERS

(a) **Redacting Personal Identifiers in Pleadings.**

The filer shall redact personal information in filings with the court, as required by Fed. R. Crim. P. 49.1. The court may order redaction of additional personal identifiers by motion and order in a specific case or as to a specific document or documents.

(b) **Redacting Personal Identifiers in Transcripts.**

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 court reporter of the redactions which must be made before the transcript becomes available through PACER. Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

- (1) opening and closing statements made on the party's behalf;
- (2) statements of the party;
- (3) the testimony of any witnesses called by the party; and
- (4) any other portion of the transcript as ordered by the court.

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

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

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

DUCrimR 53-1 COURTROOM PRACTICES AND PROTOCOL

The standards relating to attorney practices, protocol, and conduct when participating in civil proceedings are prescribed in DUCivR 43-1. The standards apply equally to all criminal proceedings in this district.

See DUCrimR 57-13 for cameras, recording devices, broadcasting, etc.

DUCrimR 55-1 ACCESS TO COURT RECORDS

Access to records related to criminal proceedings and maintained by the clerk is governed by DUCivR 79-1.

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, and the twenty-four (24) hour filing box are the same as those set forth in DUCivR 77-1.

DUCrimR 57-1 GENERAL FORMAT OF PAPERS

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

DUCrimR 57-2 ASSIGNMENT OF CRIMINAL CASES

Supervision of 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 DUCivR 83-2.

DUCrimR 57-3 ASSOCIATION AND FILING OF CRIMINAL CASES

(a) Pending Cases Involving Same Defendant.

Where there are two or more cases pending against the same defendant before two or more assigned judges, the United States, the defendant, or the court on its own motion, where appropriate, may move by written motion before either judge to assign the case to the judge with the low-number case.

(b) Filing of Information Related to New Charges Based on Plea Bargains.

When the United States, as part of a plea bargain, files an information against a defendant setting forth a charge unrelated in substance to a pending charge in a case before an assigned judge, the new information must be filed promptly with the clerk of court who will open a new criminal case and assign a judge pursuant to subsection (a) of this rule. Thereafter, the United States may make a motion for association or reassignment as set forth in section (c) of this rule.

(c) Filing Requirements.

A motion for association under Fed. R. Crim. P. 13, accompanied by a proposed order, may be filed in any one of the cases for which association is being proposed. A notice of filing the motion must be filed in each other case that the party seeks to have associated. Both the motion for association and the notice of filing must include the name and number of all cases for which association is being moved.

DUCrimR 57-4 CRIMINAL CASE PROCESSING

(a) General Authority.

Criminal cases will be processed in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, as amended, and the court's Revised Speedy Trial Plan.

(b) Arrest Date Information.

At the first court appearance of any person arrested for a federal offense not yet charged in an indictment or information, counsel for the United States will note for the record the date of the arrest. Such date will be recorded on the case docket and utilized by the clerk for initiating the Speedy Trial Act provisions with regard to time limitations and procedural intervals under

18 U.S.C. § 3161 (b). The clerk also will initiate such tracking provisions in matters involving persons served with a criminal summons, utilizing the service date of the summons.

DUCrimR 57-5 CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

The custody and disposal of criminal trial exhibits and the attendant responsibilities of counsel are governed by DUCivR 83-5(a)(1), (b), and (c).

DUCrimR 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 57-7 PUBLIC COMMUNICATIONS CONCERNING CRIMINAL MATTERS

(a) Statement of Policy.

A government or defense attorney or member of the same firm or office as the government or defense attorney may not disseminate by means of public communication, or means which could reasonably be anticipated to become public, any information, statement, or other matter which will have a substantial likelihood of preventing a fair trial or directly impeding the due administration of justice. Court supporting personnel, including marshals, deputy clerks, court reporters, probation officers, and their staffs or office personnel (whether employees or independent contractors) may not disclose to any person, without court authorization, any opinion or information relating to a pending investigation or prosecution that is not part of the public record, including information concerning grand jury proceedings or hearings and argument held outside the presence of the public.

(b) **Permissible Communications by Attorneys.**

A government or defense attorney may:

- (1) quote without comment from the public record;
- (2) inform the public of the general scope of an investigation or prosecution (including the name of the victim if not prohibited by law);
- (3) warn the public of danger;
- (4) solicit the help of the public in apprehending a suspect or fugitive or in procuring evidence;
- (5) identify an accused by name, age, residence, occupation, and family status;
- (6) announce the circumstances of arrest (including time, place, resistance, pursuit, use of weapons, arresting officer, length of investigation) and the seizure of physical evidence (including description of objects seized); and
- (7) note the accused's denial of the charges and the accused's intent to seek an acquittal.

(c) **Impermissible Communications by Attorneys.**

- (1) A government attorney must make no reference to an accused's prior criminal record, except to the extent that it may be relevant to an explanation of the charges, confessions, or results of tests, or disclose any proposed evidence which the attorney knows or should know would not be admissible at trial, or render an opinion prior to or during trial as to the attorney's personal belief of the accused's guilt or innocence.
- (2) A defense attorney must not (i) render any personal belief or opinion prior to or during trial as to accused's guilt or innocence, (ii) make any statement attributing the commission of the crime charged to a specific person other than the defendant, or (iii) disclose evidence that the attorney knows or should know would not be admissible at trial, which evidence could materially affect the fairness of the proceedings.

(d) **Sanctions for Rule Violation.**

Any attorney who violates the provisions of sections (a) or (c) of this rule will be subject to such sanctions as the court deems just and proper. Such discipline may be entered by the court sua sponte or upon motion of a party.

DUCrimR 57-8 COMMUNICATION WITH JURORS

Communications with jurors before, during, and after criminal trials are governed by DUCivR 47-2.

DUCrimR 57-9 MOTIONS FOR POST-CONVICTION RELIEF

(a) **Form of Motion.**

All motions for post-conviction relief under 28 U.S.C. § 2255 by a person in federal custody must be in writing and in substantially the standard form prescribed by the Rules Governing Section 2255 Proceedings for the United States District Courts, as set forth following 28 U.S.C. § 2255.

(b) **Duties of the Clerk.**

The clerk of court will make blank forms available upon request and without charge. Upon receiving any motion which does not substantially comply with the prescribed form, the clerk will file the motion but notify the applicant of the requirements of this rule and provide to the applicant the correct form with instructions to complete and return it to the court.

(c) **Service Upon the Government.**

All motions filed under this rule must state with particularity the reasons for the post-conviction relief. A copy of the motion must be served upon the United States attorney's office. The district judge or magistrate judge will review the petition under Rule 4, Rules Governing Section 2255 Proceedings. If the motion warrants a response, an order will be made requiring the United States attorney to respond to the motion and a time for reply will be set. The order may direct the United States attorney to present appropriate documentation or information on the motion.

(d) **Assignment of Motion to Appropriate District Judge.**

The clerk of court, upon receipt of any motion filed under this rule, will notify the district judge who originally sentenced the applicant or, if that judge is unavailable, the clerk will so notify the judge otherwise assigned to the case.

(e) **Discretionary Assignment of Motion to Magistrate Judge.**

The court may refer the motion to a magistrate judge for investigation, recommendation, or final determination.

(f) **Discretionary Hearing.**

Unless otherwise ordered by the court upon motion by the applicant, no oral submission or hearing will be held upon the motion.

(g) **Authority for Proceedings.**

The proceedings on a motion under 28 U.S.C. § 2255 will be processed in conformity with statute and the Rules Governing Section 2255. The motion must state all bases for relief. Successive petitions may be denied under Rule 9, Rules Governing Section 2255 Proceedings.

DUCrimR 57-10 RELIEF FROM STATE DETAINER

No petition lodged or filed by a prisoner under the provisions of the Interstate Agreement on Detainers (18 U.S.C., Appendix III) for relief of any sort from the effect of a state detainer will be entertained unless (i) the petitioner, at least 180 days prior to the date of lodging or filing a petition, transmits, through the warden or other official having petitioner's custody, to the prosecuting officer of the jurisdiction in which the case giving rise to the detainer is pending, and to the appropriate court, a written notice of the place of imprisonment and the petitioner's request for a final disposition of the indictment, information, or complaint upon which the detainer is based; and (ii) the petitioner has not been brought to trial on such indictment, information, or complaint.

DUCrimR 57-11 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.

DUCrimR 57-12 ATTORNEYS

All procedural matters relating to attorney admissions, registration, appearance and withdrawal, discipline and removal, and student practice in criminal matters are governed by the applicable civil rules, DUCivR 83-1.1 - 83-1.6.

DUCrimR 57-13 CAMERAS, RECORDING DEVICES, AND BROADCASTS

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

DUCrimR 57-14 COURT SECURITY

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

DUCrimR 57-15 MAGISTRATE JUDGE AUTHORITY IN CRIMINAL CASES

(a) General Authority.

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

- (1) accept criminal complaints, determine whether probable cause exists, and issue arrest warrants, summons, and search warrants, including those based on oral or telephonic testimony;
- (2) administer oaths and affirmations; take acknowledgments, affidavits, and depositions;
- (3) conduct initial appearance proceedings, inform defendants of their rights, set bail, enter orders of detention, and impose conditions of release;
- (4) dismiss complaints in criminal proceedings prior to indictment or information upon motion of the United States attorney;
- (5) appoint counsel for indigent defendants,
- (6) conduct detention and pretrial release revocation hearings;

- (7) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, and other orders necessary to secure the presence of parties, witnesses or evidence for court proceedings;
- (8) order the forfeiture or exoneration of bonds;
- (9) issue warrants of removal;
- (10) conduct hearings under Fed. R. Crim. P. 20;
- (11) conduct full preliminary examinations;
- (12) set bail and appoint counsel if appropriate, for material witnesses;
- (13) issue orders (i) authorizing the installation of devices such as traps/traces and pen registers, and (ii) directing a communication common carrier, as defined in 47 U.S.C. § 153(h) including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers;
- (14) receive grand jury returns and pretrial release violation petitions and authorize the issuance of arrest warrants or summons thereupon; and
- (15) take a plea of guilty on (i) appropriate reference from the district judge assigned to the case, and (ii) the consent of the parties.

(b) Criminal Pretrial Authority.

After an indictment or felony information has been filed and assigned to a district judge under DUCrimR 57-2, magistrate judges are authorized to:

- (1) conduct arraignments;
- (2) accept or enter not guilty pleas;
- (3) order presentence reports;
- (4) hear and rule on motions to modify bail and/or conditions of release; and,
- (5) conduct scheduling hearings pursuant to Fed. R. Crim. P. 17.1.

(c) Authority to Conduct Hearings, Prepare Report and Recommendations, and Determine Preliminary Matters.

Upon entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(A), magistrate judges are authorized to determine nondispositive pretrial matters, manage the

discovery process, and rule on motions by attorneys appointed under the Criminal Justice Act for services under that act including appointment of experts and investigators. Upon entry by a district judge of an order of reference under 28 U.S.C. § 636(b)(1)(B), magistrate judges are authorized to (i) hear motions to dismiss or quash an indictment and motions to suppress evidence, and (ii) submit to the assigned district judge a report with proposed findings of fact and recommendations.

(d) Criminal Trial Authority.

Magistrate judges are authorized (i) to try persons accused of and (ii) to sentence persons convicted of misdemeanors committed within this district in accordance with 18 U.S.C. § 3401 and as otherwise provided by statute.

(e) Extradition Proceedings.

Unless otherwise ordered by a judge of this court, when a foreign government requests the arrest of a fugitive pursuant to a treaty or convention for extradition between the United States and the requesting country and on the basis of a complaint under oath, a magistrate judge of this court is authorized to issue warrants and conduct extradition proceedings in accordance with the provisions set forth in 18 U.S.C. § 3184.

(f) Specialized Courts.

Upon entry by a district court of an order of reference or consistent with a sentencing order, a magistrate judge is authorized to preside over matters in a specialized court. Specialized courts may address issues confronting offenders as they return to their communities including overseeing services providing diagnostic and risk assessment, education and job training, substance abuse and mental health treatment and mentoring.

DUCrimR 57-16 APPEAL OF MAGISTRATE JUDGE ORDERS

(a) Preliminary Criminal Matters.

- (1) Release and Detention Orders. Any party is entitled to appeal a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. §§ 3143 et seq. The appeal will be a timely scheduled de novo review by the assigned district judge. Where no judge has been assigned, the clerk will assign the appeal under DUCrimR 57-2.

(2) Other Orders and Rulings. Appeals of magistrate judge rulings on criminal motions will be conducted in the same manner as appeals of magistrate judge rulings on civil motions.

(b) **Stays of Magistrate Judge Orders.**

Pending review of objections, motions for stay of magistrate judge orders initially must be addressed to the magistrate judge.

(c) **Final Judgments.**

The appeal of final judgments issued by magistrate judges in misdemeanors and petty offenses is governed by DUCrimR 58-1.

**DUCrimR 58-1 APPEALS FROM MAGISTRATE JUDGE DECISIONS IN
MISDEMEANORS AND PETTY OFFENSE CASES**

(a) **Time Frames, Filing, and Service Requirements.**

(1) Notices of appeal on decisions of the magistrate judge must be filed with the clerk of court within fourteen (14) days after judgment and/or decision. An interlocutory appeal may be taken under Fed. R. Crim. P. 58(g)(2)(A).

(2) The appellant's brief is due within fourteen (14) days after the filing of the notice of appeal. The original must be filed with the clerk of court and a copy served on opposing counsel.

(3) The appellee's brief is due within fourteen (14) days after service of appellant's brief. The original must be filed with the clerk of court and a copy served on opposing counsel.

(4) The appellant may file a reply brief within seven (7) days after service of appellee's brief.

(b) **Page Limitations.**

Briefs on appeal must not exceed twenty (20) pages except with permission of the court.

Appellant reply briefs must not exceed ten (10) pages except with permission of the court.

(c) **Action by the Court.**

All appeals from magistrate judge decisions will be decided by the court without a hearing, unless otherwise ordered by the court on its own motion or, at its discretion, upon written request of appellant.

DUCrimR 59-1 EFFECTIVE DATE

These rules are effective December 1, 2013.

LIST OF APPENDICES

- Appendix I:** **Application to Proceed Without Prepayment of Fees and Affidavit (DUCivR 3-2(a)(1))**
- Appendix II:** **Application to Proceed Without Prepayment of Fees and Affidavit for Incarcerated Pro Se Plaintiffs (DUCivR 3-2(b)(1))**
- Appendix III:** **General Form for Reporting Attorneys' Planning Meeting (DUCivR 16-1(a)(1))**
- Appendix IV:** **General Form of Pretrial Order (DUCivR 16-1(e))**
- Appendix V:** **Utah Standards of Professionalism and Civility(DUCivR 83-1.1(g))**
- Appendix VI:** **General Form for Notice of Appearance (DUCivR 83-1.3(a))**
- Appendix VII:** **Notice of Change of Attorney Address (DUCivR 83-1.3(e))**
- Appendix VIII:** **Motion to Withdrawal of Counsel (DUCivR 83- 1.4(a)(1)(A))**
- Appendix IX:** **Order Granting Motion to Withdraw as Counsel (DUCivR 83-1.4(a)(1)(B))**
- Appendix X:** **Attorney Misconduct Complaint Form (DUCivR 83-1.5.5)**
- Appendix XI:** **General Consent Form for Law Student Entry of Appearance (DUCivR 83-1.6(c)(2))**
- Appendix XII:** **General Attorney Consent Form for Appearance by Law Student (DUCivR 83-1.6(c)(3))**
- Appendix XIII:** **General Form for Certification of Eligibility for Student Practice (DUCivR 83-1.6(c)(4))**
- Appendix XIV:** **Weapons Policy: Frank E. Moss Courthouse (DUCivR 83-4(c))**
- Appendix XV:** **Standard Protective Order (DUCivR 26-2)**

UNITED STATES DISTRICT COURT

for the

District of

_____)	
<i>Plaintiff/Petitioner</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant/Respondent</i>)	

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____ .
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____ , and my take-home pay or wages are: \$ _____ per
(specify pay period) _____ .

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Plaintiff	*	
	*	Application to Proceed without
vs.	*	Prepayment of Fees and Affidavit
	*	for Incarcerated Pro Se Plaintiffs
Defendant	*	
	*	CASE NUMBER: _____

I, _____, Inmate Number _____, declare that (i) I am the petitioner/plaintiff/appellant in this proceeding, (ii) I am unable to prepay the costs of these proceedings, and (iii) I am entitled to the relief sought in my petition/complaint/ appeal. In support of this application, I respond to the following under penalty of perjury:

I currently am incarcerated at the _____.

_____ Yes _____ No I am employed at the above-named institution.

_____ Yes _____ No I receive payments from the above-named institution.

_____ Yes _____ No I have a prisoner trust account in my name at the institution.

_____ Yes _____ No I have other sources of income or savings outside of the institution.

 If yes, list sources and amounts: _____

I declare under penalty of perjury that the above information is true and correct.

Date	Signature of Applicant
------	------------------------

**CERTIFICATE OF CORRECTIONAL OFFICIAL
AS TO STATUS OF APPLICANT'S TRUST ACCOUNT**

I hereby certify that as of the date applicant signed this application:

the applicant _____ has/ _____ does not have a trust account at this institution.

the applicant's trust account balance is \$ _____

the average monthly deposits during the prior six months is \$ _____

the average monthly balance during the prior six months is \$ _____

the attached account summary accurately reflects the status of the account.

Date	Authorized Signature	Title	Institution
------	----------------------	-------	-------------

Counsel Submitting and Utah State Bar Number
Attorneys for
Address
Telephone
E-mail Address

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH _____ DIVISION

_____ Plaintiff, v. _____ Defendant.	ATTORNEY'S PLANNING MEETING REPORT Case No. _____ District Judge _____
--	---

1. PRELIMINARY MATTERS:

- a. The nature of the claims and affirmative defenses is:
- b. This case is _____ not referred to a magistrate judge
_____ referred to magistrate judge _____
_____ under 636(b)(1)(A)
_____ under 636(b)(1)(B)
_____ assigned to a magistrate judge under General Order 07-001 and
_____ all parties consent to the assignment for all proceedings or
_____ one or more parties request reassignment to a district judge
- c. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on *specify date* at *specify location*.
The following attended:

_____ *name of attorney*,
counsel for _____ *name of party*

_____ *name of attorney*,
counsel for _____ *name of party*
- d. The parties _____ request / _____ do not request an initial pretrial scheduling conference with the court prior to entry of the scheduling order. An initial pretrial scheduling conference is set before Magistrate Judge _____ on _____, 20____, at _____. m.
- e. The parties _____ have exchanged or _____ will exchange by ____/____/____ the initial disclosures required by Rule 26(a)(1).

f. Pursuant to Fed. R. Civ. P. 5(b)(2)(D), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by either (i) notice of electronic filing, or (ii) e-mail transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.

2. **DISCOVERY PLAN:** The parties jointly propose to the court the following discovery plan: *Use separate paragraphs or subparagraphs as necessary if the parties disagree.*

a. Discovery is necessary on the following subjects: *Briefly describe the subject areas in which discovery will be needed.*

b. Discovery Phases.
Specify whether discovery will (i) be conducted in phases, or (ii) be limited to or focused upon particular issues. If (ii), specify those issues and whether discovery will be accelerated with regard to any of them and the date(s) on which such early discovery will be completed.

c. Designate the discovery methods to be used and the limitations to be imposed.

(1) *For oral exam depositions, (i) specify the maximum number for the plaintiff(s) and the defendant(s), and (ii) indicate the maximum number of hours unless extended by agreement of the parties.*

Oral Exam Depositions

Plaintiff(s) _____

Defendant(s) _____

Maximum no. hrs. per deposition _____

(2) *For interrogatories, requests for admissions, and requests for production of documents, specify the maximum number that will be served on any party by any other party.*

Interrogatories _____

Admissions _____

Requests for production of documents _____

(3) *Other discovery methods: Specify any other methods that will be used and any limitations to which all parties agree.*

d. Discovery of electronically stored information should be handled as follows: *Brief description of parties' agreement.*

e. The parties have agreed to an order regarding claims of privilege or protection as trial preparation material asserted after production, as follows: *Brief description of provisions of proposed order.*

- b. This case should be referred to the court's alternative dispute resolution program for arbitration: _____ mediation: _____
- c. The parties intend to engage in private alternative dispute resolution for arbitration: _____ mediation: _____
- d. The parties will re-evaluate the case for settlement/ADR resolution on: *specify date* ___/___/___.

7. TRIAL AND PREPARATION FOR TRIAL:

- a. The parties should have _____ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3) (if different than 14 days provided by Rule).
- b. This case should be ready for trial by: *specify date* ___/___/___
Specify type of trial: Jury Bench
- c. The estimated length of the trial is: *specify days* _____

Signature and typed name of Plaintiff(s) Attorney

Date: ___/___/___

Signature and typed name of Defendant(s) Attorney

Date: ___/___/___

NOTICE TO COUNSEL

The Report of the Attorney Planning Meeting should be completed and filed with the Clerk of the Court twenty-one days before the date of the Initial Pretrial Conference. A copy of the Proposed Scheduling Order on the court's official form should be submitted in word processing format by email to ipt@utd.uscourts.gov. If counsel meet, confer, and

- (i) file a stipulated Attorney Planning Meeting Report *and*
- (ii) email a draft scheduling order in word processing format by email to ipt@utd.uscourts.gov

twenty-one days before the scheduled hearing, the Court will consider entering the Scheduling Order based on the filed Attorney Planning Meeting Report.

If the Hearing is held, counsel should bring a copy of the Attorney Planning Meeting Report to the Hearing.

In CM/ECF, this document should be docketed as Other Documents - Attorney Planning Meeting.

More information is available at

<http://www.utd.uscourts.gov/documents/ipt.html>



ECF Civil • Cri

Other Documents

Attorney Planning Meeting

Next Clear

APPENDIX III

GENERAL FORM OF PRETRIAL ORDER

Counsel Submitting and Utah State Bar Number
Attorney for
Address
Telephone

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH _____ DIVISION

vs.

*
* **Case Number**
*
*
* **PRETRIAL ORDER**

This matter having come before the court on _____, 20____, at a pretrial conference held before the Honorable _____, pursuant to Fed. R. Civ. P. 16; and _____, *name of attorney* having appeared as counsel for plaintiff, and _____, *name of attorney* having appeared as counsel for defendant, and _____, *name of attorney* having appeared as counsel for _____, the following action was taken:

1. **JURISDICTION.** This is an action for _____. Jurisdiction of the court is invoked under ____ U.S.C. section(s) _____. The jurisdiction of the court is not disputed and is hereby determined to be present.
VENUE. Venue was determined by the court to be proper pursuant to ____ U.S.C. section(s) _____. Venue is laid in the _____ Division of the District of Utah. *See 28 U.S.C. § 125.*
2. **GENERAL NATURE OF THE CLAIMS OF THE PARTIES**
 - (a) Plaintiff's claims: *Briefly summarize.*
 - (b) Defendant's claims: *Briefly summarize.*
 - (c) All other parties' claims: *Briefly summarize where third parties are involved.*
3. **UNCONTROVERTED FACTS.** The following facts are established by admissions in the pleadings, by order pursuant to Fed. R. Civ. P. 56(d), or by stipulation of counsel: *Briefly set forth, including admitted jurisdictional facts and all other material facts that are not at issue.*

4. **CONTESTED ISSUES OF FACT.** The contested issues of fact remaining for decision are: *Briefly set forth each contested issue.*

5. **CONTESTED ISSUES OF LAW.** The contested issues of law, in addition to those implicit in the foregoing issues of fact, are: *Either set forth each issue or indicate that no special issues of law other than those implicit in the foregoing issues of fact were reserved.*

6. **EXHIBITS.** The following were received in evidence or were identified and offered: *List individually, indicating whether received or identified.*

(a) Plaintiff's exhibits:

(b) Defendant's exhibits:

(c) Exhibits of any third parties:

(d) Exhibits received in evidence and placed in the custody of the clerk may be withdrawn from the clerk's office upon signing of receipts therefor by the respective parties offering them. The exhibits shall be returned to the clerk's office within a reasonable time and in the meantime shall be available for inspection at the request of other parties.

(e) Exhibits identified and offered that remain in the custody of the party offering them shall be made available for review by the offering party to any other party to the action that requests access to them in writing.

(f) Except as otherwise indicated, the authenticity of received exhibits has been stipulated but they have been received subject to objections, if any, by an opposing party at the trial as to their relevancy and materiality. If other exhibits are to be offered, the necessity for which reasonably cannot now be anticipated, they will be submitted to opposing counsel at least _____ days prior to trial.

7. **WITNESSES.**

(a) In the absence of reasonable notice to opposing counsel to the contrary:

(i) plaintiff will call as witnesses: *List individually.*

(ii) plaintiff may call as witnesses: *List individually.*

(iii) plaintiff will use the following depositions: *List each deposition, identified by date and name of witness.*

(b) In the absence of reasonable notice to opposing counsel to the contrary:

(i) defendant will call as witnesses: *List individually.*

(ii) defendant may call as witnesses: *List individually.*

(iii) defendant will use the following depositions: *List each deposition, identified by date and name of witness.*

(c) In the absence of reasonable notice to opposing counsel to the contrary:
Part (c) should be completed by the third party(ies), if any.

(i) _____ will call as witnesses: *List individually.*

(ii) _____ may call as witnesses: *List individually.*

(iii) _____ will use the following depositions: *List each deposition, identified by date and name of witness.*

(d) In the event that witnesses other than those listed are to be called to testify at the trial, a statement of their names, addresses, and the general subject matter of their testimony will be served upon opposing counsel and filed with the court at least ____ days prior to trial. This restriction shall not apply to rebuttal witnesses whose testimony, where required, cannot reasonably be anticipated before the time of trial.

8. REQUESTS FOR INSTRUCTIONS. If the case is to be tried before a jury, requests for instructions to the jury and special requests for voir dire examination of the jury shall be submitted to the court pursuant to DUCivR 51-1. Counsel may supplement requested instructions during trial on matters that could not reasonably be anticipated prior to trial.

9. AMENDMENTS TO PLEADINGS. There were no requests to amend pleadings.
Or The following order was made regarding amendments to the pleadings:
Set out.

10. DISCOVERY. Discovery has been completed.

Or Discovery is to be completed by _____.

Or Further discovery is limited to _____.

Or The following provisions were made for discovery: *Briefly specify.*

11. TRIAL SETTING. *Complete either a. or b.*

a. The case was set for trial ____ with/ ____ without a jury on _____, 20__ at _____ o'clock __.m. at _____. *Indicate location as Salt Lake City or Ogden. See 28 U.S.C. §1404(b).*

b. No definite setting was made, but it was estimated that the case will be set for trial no later than _____, 20__. Estimated length of trial is _____ days.

12. POSSIBILITY OF SETTLEMENT. Possibility of settlement is considered ____ good ____fair ____poor.

DATED: _____

BY THE COURT

UNITED STATES DISTRICT JUDGE

The foregoing proposed pretrial order (prior to execution by the court) is hereby adopted this
_____ day of _____, 20____.

Address:

Counsel for plaintiff

Address: _____

Counsel for defendant

Address:

(Counsel for other parties, if any)

APPENDIX IV

UTAH STANDARDS OF PROFESSIONALISM AND CIVILITY

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout Utah. We further expect lawyers to educate their clients regarding these standards and judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics may hurt the client's case.

Although for ease of usage the term "court" is used throughout, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in Utah. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.
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.
3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not occurred.
5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.
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.
7. When committing oral understanding to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.
8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.
9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.
10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.
11. Lawyers shall avoid impermissible ex parte communications.
12. Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.
13. Lawyers shall not knowingly file or serve motion, 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 client’s 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.
17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.
18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.
19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.
20. Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.

APPENDIX V

GENERAL FORM FOR NOTICE OF APPEARANCE

Counsel Submitting and Utah State Bar Number
Attorney for
Address
Telephone
E-mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
_____ DIVISION**

_____	*	
	*	Case Number
	*	
vs.	*	
	*	NOTICE OF APPEARANCE
	*	OF COUNSEL
	*	

Notice is hereby given of the entry of the undersigned as counsel for _____ in the above-entitled action. Pursuant to Fed. R. Civ. P. 5, all further notice and copies of pleadings, papers, and other material relevant to this action should be directed to and served upon:

Attorney's name
Attorney's email address
Firm name *where applicable*
Complete mailing address

DATED : _____

Signature of Attorney

APPENDIX VI

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

- Attorney Change of Address Form -

Under the District Court Rules of Practice (DUCivR 83-1.3(b)), it is the responsibility of each member of the bar of this court to keep the court informed of any address change within twenty-four hours. Notifying the State Bar will not update your information with this court.

Full Name: _____

Utah Bar No. (if applicable) _____

NEW ADDRESS INFORMATION:

Firm Name: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Primary E-Mail Address: _____
_____ No Change _____ Replacement

Secondary E-Mail Address: _____
_____ No Change _____ Replacement _____ Addition _____ Removal

Additional E-Mail Address: _____
_____ No Change _____ Replacement _____ Addition _____ Removal

This change applies to: _____ the individual attorney named
_____ the entire firm

Person requesting change: _____ Date: _____

Submit completed form to: United States District Court, District of Utah
Attn: Attorney Database Administrator
350 S. Main Street, Room 150
Salt Lake City, Utah 84101

or Email to: ut_support@utd.uscourts.gov
or Fax to: 801-526-1175

Note: Submission of this form will result in your address being changed in the court's attorney database only. You need to notify your clients and opposing counsel by other means.

UNITED STATES DISTRICT COURT

for the
District of Utah

)	MOTION FOR WITHDRAWAL
<i>PLAINTIFF</i>)	OF COUNSEL
V.)	
)	CASE No.
<i>DEFENDANT</i>		DISTRICT JUDGE _____

Pursuant to DUCivR 83-1.3, _____ (“Counsel”), hereby moves to withdraw as counsel for:

Client Name: _____ (“Client”)
Address: _____
City, State, Zip: _____
Telephone Number(s): _____
E-Mail Address: _____

The reasons for withdrawal are as follows:

In the event this motion is granted, Client or new counsel for Client must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court. Pursuant to Utah DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

_____ This motion is made with the client’s consent, which is attached to this motion.

_____ This motion is made without the client’s consent and is accompanied by:

___ certification that Client has been served with (i) a copy of this motion, (ii) the attached written description of the status of the case, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or

___ certification that the Client cannot be located or, for any other reason, cannot be notified of the pendency of the motion and the status of the case.

_____ The undersigned certifies

___ no trial date is set; or

___ trial is set for _____ and

___ a certification signed by the substituting attorney is attached, indicating such attorney has been advised of the trial date and will be prepared for trial; or

___ a certification signed by Counsel is attached indicating that Client is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or

___ the following specific facts justify withdrawal of counsel without present appearance of substitute counsel or appearance by the individual party:

_____ The form of an order is attached to this motion and has been submitted in word format by email to the presiding judge in this case.

CERTIFICATION

Counsel hereby certifies that a copy of this Motion for Withdrawal of Counsel has been sent to Client at the address indicated above.

DATED this ___ day of _____, _____.

[Moving Attorney Name]
[Moving Attorney Address]
[Moving Attorney Telephone Number]
[Moving Attorney e-mail Address]
[Attorney for _____]

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION FOR WITHDRAWAL OF COUNSEL with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

[CM/ECF REGISTERED ATTORNEYS]

In addition, I hereby certify that I served the following non-CM/ECF participant(s) by United States First Class Mail, postage prepaid:

[CLIENT NAME AND ADDRESS]

DATED this ____ day of _____, _____.

[Withdrawing Attorney Name]
[Withdrawing Attorney Address]
[Withdrawing Attorney Telephone Number]
[Withdrawing Attorney e-mail Address]
[Attorney for _____]

APPENDIX VIII

UNITED STATES DISTRICT COURT

for the
District of Utah

Plaintiff

v.

Defendant

) **ORDER ON MOTION FOR**
) **WITHDRAWAL OF COUNSEL**

) **Case No.**
) **District Judge** _____

Pursuant to _____'s ("Counsel") Motion for Withdrawal of Counsel and DUCivR 83-1.4, the Court ORDERS that Counsel may withdraw, and is hereby removed, as counsel for _____ ("Client").

With regard to Client's continued representation, the Court ORDERS as follows:

_____ ("Substitute Counsel") has filed a Notice of Substitution of Counsel and is hereby recognized as counsel for Client in the above-referenced action.

_____ For individual parties: Client or new counsel for Client must file a Notice of Appearance within twenty-one (21) days after the entry of this order, unless otherwise ordered by the Court. Pursuant to Utah DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

_____ For entity parties: New counsel shall file a Notice of Appearance on behalf of any corporation, association, partnership, limited liability company or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

A party who fails to file a Notice of Substitution of Counsel or Notice of Appearance as set forth above, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

With regard to scheduling, the Court orders as follows:

_____ All litigation dates pursuant to the controlling scheduling order remain in effect.

_____ A scheduling conference is scheduled for _____, _____ at _____ .m.

_____ The action shall be stayed until twenty-one (21) days after entry of this order.

NOTICE TO PARTY

The Court will cause this Order to be sent to Client at the address set forth in the Motion for Withdrawal of Counsel and to all other parties.

DATED this ____ day of _____, ____.

BY THE COURT:

APPENDIX IX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
COMPLAINT FORM
ATTORNEY MISCONDUCT

Completed forms should be returned to the Clerk of Court in person or by mail.

Please type or print legibly:

1. Your name: _____

Address: _____

Telephone: Days (____) _____ Evenings (____) _____

2. Attorney's full name: _____

3. If you hired the attorney, date of hire: _____

If you terminated the attorney, date of termination: _____

4. Briefly describe the actions the attorney took -- or failed to take -- that you believe were unethical. Be as specific as possible and include relevant details. It would be helpful if your description is chronological. (Use additional sheets if necessary.)

5. List the names, mailing addresses, and telephone numbers of other witnesses, if any, who might support your allegations of attorney misconduct:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

6. Attach to this complaint copies of any documents that you believe support your allegations of misconduct. Examples might include fee agreements, payment receipts or canceled checks, letters, court documents with case numbers, etc. ***Do not attach any original documents or any copies of documents that are not relevant to this complaint.***
7. Read this oath before you sign the complaint. Signing the complaint means that you are submitting this complaint under the terms of the oath.

I declare under penalty of perjury that the statements I have made in this complaint are true and correct to the best of my knowledge.

Signature

SUBSCRIBED and SWORN to before me this _____ day of _____, 20__.

Notary Public

Residing in _____ County, State of _____

My Commission Expires on: _____

GENERAL CONSENT FORM FOR LAW STUDENT ENTRY OF APPEARANCE

Counsel Submitting and Utah State Bar Number
Attorney for
Address
Telephone
Email Address

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, _____ DIVISION**

Plaintiff, : **Client Consent to Entry of Appearance**
: **by Law Student [Name]**
vs. :
: **Civil/Criminal Number:**
Defendant. :

Pursuant to DUCivR 83-1.6, I hereby authorize law student [name] to enter an appearance in the above-captioned matter and appear at trial, in hearings and at other proceedings on my behalf; appear as assistant counsel at, and assist in the taking of depositions on my behalf; and co-sign documents on my behalf following review, approval, and signature by [name of supervising attorney].

I am aware that [name] is not admitted to the bar and that [name] will appear pursuant to DUCivR 83-1.6. I also am aware that [name of supervising attorney] will (i) be present with the student at all times in court, and at other proceedings in which testimony is taken; (ii) sign all pleadings or other documents filed with this court; (iii) assume personal professional responsibility for the quality of the student's work; (iv) be available for consultation with me; (v) will assist in and review all activities undertaken by [name] and permitted by the District Court Rules of Practice, to the extent required for the proper practical training of [name] and my protection; and (vi) be prepared to promptly supplement any of the student's oral or written work as necessary to ensure my proper representation.

DATED this ____ day of _____, 20____.

Signature

Name printed or typed

GENERAL ATTORNEY CONSENT FORM FOR APPEARANCE BY LAW STUDENT

Counsel Submitting and Utah State Bar Number
Attorney for
Address
Telephone
Email Address

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, _____ DIVISION**

Plaintiff,	:	
	:	Supervising Attorney's Consent to Entry
	:	of Appearance by Law Student:
vs.	:	
	:	Civil/Criminal Number(s):
Defendant.	:	

Pursuant to DUCivR 83-1.6, I hereby authorize law student [name] to enter an appearance as assistant counsel in the above-captioned matter and to appear at trial, in hearings, and at other proceedings; to assist in taking depositions; and to co-sign documents following my review, approval, and signature.

I agree to be present with [name] at all times at trial, in hearings, and at other proceedings in which testimony is taken; to sign all pleadings or other documents filed with this court; to assume personal professional responsibility for the quality of the [name] work; to be available for consultation with represented clients; to assist in and review all activities undertaken by [name] and permitted by the District Court Rules of Practice, to the extent required for the proper practical training of [name] and the protection of the client; and to be prepared to promptly supplement any of the oral or written work of [name] as necessary to ensure proper representation of the client.

DATED this ____ day of _____, 20____.

Signature

**GENERAL FORM FOR CERTIFICATION OF ELIGIBILITY
FOR STUDENT PRACTICE**

LAW SCHOOL CERTIFICATION

I hereby certify that [name of student] is a student currently enrolled and in good academic standing at the following ABA accredited law School: [name, mailing address, and telephone number of law school] and is expected to graduate on [date]

I further certify that the above-named student has successfully completed at least four semesters, or the equivalent, of law school studies, is of good character and competent legal ability, and is qualified to provide the legal representation permitted under DUCivR 83-1.6.

I further certify that I have been designated by the dean to certify students for this purpose.

Dated this ____ day of _____, 20____.

Signature

Typed or printed name

Title

DISTRICT OF UTAH WEAPONS POLICY

FRANK E. MOSS COURTHOUSE

I. WEAPONS WITHIN THE COURTROOMS, COURT CHAMBERS, JURY ASSEMBLY ROOM, GRAND JURY SUITE, AND CLERK'S OFFICE AREAS

- A. The only persons authorized to carry firearms and mace/O.C. spray type weapons shall be:
1. The U.S. Marshal and authorized Deputy Marshals.
 2. Court Security Officers acting under the authority of the U.S. Marshal as Special Deputies.
 3. Federal Protective Officers and their contract guards, while executing routine protective duties and investigations. (Firearms by these individuals are not permitted in the courtroom if the officers are testifying.)
 4. Officers of other law enforcement agencies only when granted explicit permission by the U.S. Marshal or an authorized Deputy Marshal. This permission must be obtained on a case-by-case basis, each time the officer enters the courthouse. No one other than those categories of officers defined in A.1, A.2 and A.3 of this policy shall be granted blanket authorization to carry weapons in the courthouse unless authorized in writing by the U.S. Marshal and with the consent of the Chief U.S. District Judge.
 5. Officers or agents of other law enforcement agencies who are guarding persons in custody must enter the building through the prisoner entry at the southwest corner of the basement. These officers must place their firearms and mace/O.C. spray type weapons in the Marshal's gun locker prior to entering the cell areas. If the officer subsequently escorts the prisoner to court, permission must be granted from the U.S. Marshal or authorized Deputy U.S. Marshal to retrieve the weapon to take into the courthouse.
- B. Weapons brought to court for evidence purposes are authorized if,
1. The weapon is presented to the U.S. Marshal's office for a safety check at the time the weapon is first brought into the courthouse, and
 2. The weapon is presented in the courtroom in a safe condition, i.e.,
 - a. The weapon is unloaded,

- b. All revolvers will have the cylinder open,
- c. All semi-automatics will have the slide locked to the rear and the magazines removed.
- d. All bolt action rifles and shotguns will have the bolts removed. (unless there are contradicting evidentiary requirements)
- e. All pump action rifles or shotguns will have the action locked to the rear and the magazines removed.
- f. All ammunition will be kept separate from the weapon. No one in possession or custody of such a weapon shall carry ammunition on his or her person, for that weapon.

II. WEAPONS WITHIN THE BUILDING IN OTHER AREAS

- A. The only persons authorized to carry personal firearms and mace/O.C. spray in other areas of the courthouse shall be:
 - 1. The U.S. Marshal and authorized Deputy Marshals,
 - 2. Court Security Officers acting under the authority of the U.S. Marshal as Special Deputies,
 - 3. Federal law enforcement agents who are tenants of the building, namely the Federal Protective Service officers, and contract guards acting under their authority, and investigators for the Department of Defense.
 - 4. U.S. Probation and Pretrial Services officers and Department of Defense Investigators who are authorized to carry firearms or mace/ O.C. spray shall be permitted to carry them into the building when returning to the office or leaving the office. All firearms shall be secured immediately once the officer enters the Probation and Pretrial Services Office or the Department of Defense Office in the courthouse and shall remain so secured until such time as the officer leaves the building to conduct business. Probation and pretrial services officers and Department of Defense Investigators shall not carry any firearms-type or mace/O.C. spray in other parts of the courthouse.
 - 5. Officers of other law enforcement agencies, **only** if responding to an alarm or an emergency request for assistance.
- B. All other weapons shall be secured in a gun locker at the building entrance or in the U.S. Marshal's office.

III. WEAPON TYPES ALLOWED

- A. Law enforcement officers are authorized under this policy to carry only personal handguns and/or mace/O.C. spray type weapons.

- B. The possession and carrying of all other weapons in the courthouse, other than those designated for use as official evidence in a trial in this courthouse and inspected by the U.S. Marshal or an authorized Deputy Marshal, are strictly prohibited.

IV. CONFISCATION OF WEAPONS:

- A. No unauthorized weapons will be allowed past the front doors of the main entrance to the courthouse. A sign will be posted at the door stating that weapons are not allowed in this building.
- B. The U.S. Marshal and authorized Deputy Marshals are authorized to confiscate any and all weapons carried by or in the possession of persons entering the courthouse who are not otherwise authorized under the provisions of this weapons policy to carry or possess such weapons.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____, Plaintiffs, vs. _____, Defendants.</p>	<p>STANDARD-PROTECTIVE ORDER</p> <p>Civil No.</p> <p>Honorable</p> <p>Magistrate</p>
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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under any federal procedural rule or local rule of the Court and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's-TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A. Copies of any disclosure agreement in the form of Exhibit A signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR for a period of five (5) business days after the disclosure agreement is provided to the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than five (5) business days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of

expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within five (5) business days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within five (5) business days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within five (5) business days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within five (5) business days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the disclosure agreement of Exhibit A or the information provided under subparagraph (a) above that such person possesses

facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS

EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO

OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, “Qualified Recipient” means

- (a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above; and

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the

documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee’s employment.

(b) FOR CONFIDENTIAL INFORMATION:

- (1) Those persons listed in paragraph 6(a);
- (2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;
- (3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party’s counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and
- (4) Employees of the parties.

7. Use of Protected Information

(a) In the event that any receiving party’s briefs, memoranda, discovery requests, requests for admission or other papers of any kind which are served or filed shall include another party’s CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers shall be appropriately designated pursuant to paragraphs 4(a) and (b), and pursuant to DUCivR 5.2, and shall be treated accordingly.

(b) All documents, including attorney notes and abstracts, which contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers and transcripts filed with the court which contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed in sealed envelopes and labeled according to **DUCivR 5-2**.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who

are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Notwithstanding anything set forth in paragraph 2(a) and (b) herein, any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation, stating the reasons in that request. The producing party shall then have five (5) business days from the date of receipt of the notification to:

- (i) advise the receiving parties whether or not it persists in such designation; and
- (ii) if it persists in the designation, to explain the reason for the particular designation.

(c) If its request under subparagraph (b) above is turned down, or if no response is made within five (5) business days after receipt of notification, any producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within five (5) business days, the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

- (i) the information in question has become available to the public through no violation of this Order; or
- (ii) the information was known to any receiving party prior to its receipt from the producing party; or
- (iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Produced Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court

pursuant to Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the

producing party all materials and documents containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the United States, any insurance company, or any other party to the extent that such provisions conflict with applicable Federal or State law. The Department of Justice, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order

seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order is without prejudice to the right of any person or entity to seek a modification of this Order at any time either through stipulation or Order of the Court.

18. Confidentiality of Party's own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO DUCivR 26-2
EFFECTIVE AS OF THE COMMENCEMENT OF THE ACTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____, Plaintiffs, vs. _____, Defendant.</p>	<p>DISCLOSURE AGREEMENT</p> <p>Honorable</p> <p>Magistrate Judge</p>
---	--

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Protective Order)
(Describe: _____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to any person not entitled

to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

Signed by Recipient

Name (printed)

Date: _____

APPENDIX XV