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33 34 for the production of documents and tangible things at the deposition. The procedure  
34 of Rule 34 shall apply to the request. The attendance of a nonparty witness may be  
35 compelled by subpoena under Rule 45. Documents and tangible things to be produced  
36 shall be stated in the subpoena.

37 (b)(5) A party may name as the witness a corporation, a partnership, an association,  
38 or a governmental agency, describe with reasonable particularity the matters on which  
39 questioning is requested, and direct the organization to designate one or more officers,  
40 directors, managing agents, or other persons to testify on its behalf. The organization  
41 shall state, for each person designated, the matters on which the person will testify. A  
42 subpoena shall advise a nonparty organization of its duty to make such a designation.

43 (b)(6) A deposition may be taken by remote electronic means. A deposition taken by  
44 remote electronic means is considered to be taken at the place where the witness  
45 answers questions.

46 (b)(7) A party taking a deposition using written questions shall include the written  
47 questions with the notice or subpoena and serve them on:

48 (b)(7)(A) the parties;

49 (b)(7)(B) the witness if that person is not a party; and

50 (b)(7)(C) the officer.

51 (b)(7)(D) Within 14 days after the questions are served, a party may serve cross  
52 questions. Within 7 days after being served with cross questions, a party may serve  
53 redirect questions. Within 7 days after being served with redirect questions, a party may  
54 serve recross questions.

55 (b)(7)(E) The officer shall ask any written questions.

56 (c) Examination and cross-examination; objections.

57 (c)(1) Questioning of witnesses may proceed as permitted at the trial under the Utah  
58 Rules of Evidence, except Rules 103 and 615.

59 (c)(2) All objections shall be recorded, but the questioning shall proceed, and the  
60 testimony taken subject to the objections. Any objection shall be stated concisely and in  
61 a non-argumentative and non-suggestive manner. A person may instruct a witness not  
62 to answer only to preserve a privilege, to enforce a limitation on evidence directed by

63 the court, or to present a motion for a protective order under Rule 26(c). Upon demand  
64 of the objecting party or witness, the depositions shall be suspended for the time  
65 necessary to make a motion. The party taking the deposition may complete or adjourn  
66 the deposition before moving for an order to compel discovery under Rule 37.

67 (d) Limits. During initial fact discovery, each side (plaintiffs collectively, defendants  
68 collectively, and third-party defendants collectively) is limited to 20 hours of deposition  
69 by oral questioning. Oral questioning of a nonparty shall not exceed four hours, and oral  
70 questioning of a party shall not exceed seven hours. A deposition by written questioning  
71 shall not cumulatively exceed 15 questions, including discrete subparts, by the plaintiffs  
72 collectively, by the defendants collectively or by third-party defendants collectively.

73 (e) Submission to witness; changes; signing. Within 28 days after being notified by  
74 the officer that the transcript or recording is available, a witness may sign a statement of  
75 changes to the form or substance of the transcript or recording and the reasons for the  
76 changes. The officer shall append any changes timely made by the witness.

77 (f) Record of deposition; certification and delivery by officer; exhibits; copies.

78 (f)(1) The officer shall record the deposition or direct another person present to  
79 record the deposition. The officer shall sign a certificate, to accompany the record, that  
80 the witness was under oath or affirmation and that the record is a true record of the  
81 deposition. The officer shall keep a copy of the record. The officer shall securely seal  
82 the record endorsed with the title of the action and marked "Deposition of (name). Do  
83 not open." and shall promptly send the sealed record to the attorney or the party who  
84 designated the recording method. An attorney or party receiving the record shall store it  
85 under conditions that will protect it against loss, destruction, tampering, or deterioration.

86 (f)(2) Every party may inspect and copy documents and things produced for  
87 inspection and must have a fair opportunity to compare copies and originals. Upon the  
88 request of a party, documents and things produced for inspection shall be marked for  
89 identification and added to the record. If the witness wants to retain the originals, that  
90 person shall offer the originals to be copied, marked for identification and added to the  
91 record.

92 (f)(3) Upon payment of reasonable charges, the officer shall furnish a copy of the  
93 record to any party or to the witness. An official transcript of a recording made by non-  
94 stenographic means shall be prepared under Utah Rule of Appellate Procedure 11(e).

95 (g) Failure to attend or to serve subpoena; expenses. If the party giving the notice of  
96 a deposition fails to attend or fails to serve a subpoena upon a witness who fails to  
97 attend, and another party attends in person or by attorney, the court may order the party  
98 giving the notice to pay to the other party the reasonable costs, expenses and attorney  
99 fees incurred.

100 Advisory Committee Notes

101

1 **Rule 31. Depositions upon written questions.**

2 (a) Serving questions; notice.

3 (a)(1) ~~A party may take the testimony of any person, including a party, by deposition~~  
4 ~~upon written questions without leave of court except as provided in paragraph (2). an~~  
5 ~~opposing yThe attendance of witnesses may be compelled by the use of subpoena as~~  
6 ~~provided in Rule 45.~~

7 (a)(2) ~~A party must obtain leave of court, which shall be granted to the extent~~  
8 ~~consistent with the principles stated in Rule 26(b)(2), if the person to be examined is~~  
9 ~~confined in prison or if, without the written stipulation of the parties,~~

10 (a)(2)(A) ~~a proposed deposition would result in more than ten depositions being~~  
11 ~~taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third party~~  
12 ~~defendants;~~

13 (a)(2)(B) ~~the person to be examined has already been deposed in the case; or~~

14 (a)(2)(C) ~~a party seeks to take a deposition before the time specified in Rule 26(d).~~

15 (a)(3) ~~A party desiring to take a deposition upon written questions shall serve them~~  
16 ~~upon every other party with a notice stating (1) the name and address of the person~~  
17 ~~who is to answer them, if known, and if the name is not known, a general description~~  
18 ~~sufficient to identify him or the particular class or group to which he belongs, and (2) the~~  
19 ~~name or descriptive title and address of the officer before whom the deposition is to be~~  
20 ~~taken. A deposition upon written questions may be taken of a public or private~~  
21 ~~corporation or a partnership or association or governmental agency in accordance with~~  
22 ~~the provisions of Rule 30(b)(6).~~

23 (a)(4) ~~Within 14 days after the notice and written questions are served, a party may~~  
24 ~~serve cross questions upon all other parties. Within 7 days after being served with cross~~  
25 ~~questions, a party may serve redirect questions upon all other parties. Within 7 days~~  
26 ~~after being served with redirect questions, a party may serve recross questions upon all~~  
27 ~~other parties. The court may for cause shown enlarge or shorten the time.~~

28 (b) ~~Officer to take responses and prepare record. A copy of the notice and copies of~~  
29 ~~all questions served shall be delivered by the party taking the deposition to the officer~~  
30 ~~designated in the notice, who shall proceed promptly, in the manner provided by Rule~~

31 ~~30(c), (e), and (f), attaching to the deposition the copy of the notice and the questions~~  
32 ~~received.~~

33 ~~Advisory Committee Notes~~

34

1           **Rule 33. Written questions to parties.**

2           (a) Availability; procedures for use. During initial fact discovery, any party may serve  
3 upon any other party up to 15 written questions, including all discrete subparts.

4           (b) Answers and objections. Each question shall be answered separately and fully in  
5 writing under oath or affirmation unless it is objected to. If a question is objected to, the  
6 party shall state the reasons for the objection. Any reason not stated is waived unless  
7 excused by the court for good cause. The party shall answer any part of a question that  
8 is not objectionable. A question is not objectionable merely because an answer involves  
9 an opinion or argument that relates to fact or the application of law to fact. The  
10 answering party shall serve the answers and objections within 28 days after service of  
11 the questions.

12           (c) Scope; use at trial. Questions may relate to any discoverable matter. Answers  
13 may be used as permitted by the Rules of Evidence.

14           (d) Option to produce business records. If the answer to a question may be found by  
15 inspecting the answering party's business records, including electronically stored  
16 information, and the burden of finding the answer is substantially the same for both  
17 parties, the answering party may identify the records from which the answer may be  
18 found. The answering party must give the asking party reasonable opportunity to  
19 inspect the records and to make copies, compilations, or summaries. The answering  
20 party must identify the records in sufficient detail to permit the asking party to locate and  
21 to identify them as readily as the answering party.

22           Advisory Committee Notes

23

1       **Rule 34. Production of documents and things and entry upon land for**  
2 **inspection and other purposes.**

3       (a) Scope.

4       (a)(1) Any party may serve on any other party a request to produce and permit the  
5 requesting party to inspect, copy, test or sample any designated discoverable  
6 documents, electronically stored information or tangible things (including writings,  
7 drawings, graphs, charts, photographs, sound recordings, images, and other data or  
8 data compilations stored in any medium from which information can be obtained,  
9 translated, if necessary, by the respondent into a reasonably usable form) in the  
10 possession or control of the responding party .

11       (a)(2) Any party may serve on any other party a request to permit entry upon  
12 designated property in the possession or control of the responding party for the purpose  
13 of inspecting, measuring, surveying, photographing, testing, or sampling the property or  
14 any designated discoverable object or operation on the property.

15       (b) Procedure and limitations.

16       (b)(1) The request shall identify the items to be inspected by individual item or by  
17 category, and describe each item and category with reasonable particularity. During  
18 initial fact discovery, the request shall not cumulatively include more than 25 distinct  
19 items or categories of items. The request shall specify a reasonable date, time, place,  
20 and manner of making the inspection and performing the related acts. The request may  
21 specify the form or forms in which electronically stored information is to be produced.

22       (b)(2) The responding party shall serve a written response within 28 days after  
23 service of the request. The response shall state, with respect to each item or category,  
24 that inspection and related acts will be permitted as requested, or that the request is  
25 objected to. If the party objects to a request, the party must state the reasons for the  
26 objection. Any reason not stated is waived unless excused by the court for good cause.  
27 The party shall identify and permit inspection of any part of a request that is not  
28 objectionable. If the party objects to the requested form or forms for producing  
29 electronically stored information -- or if no form was specified in the request -- the  
30 responding party must state the form or forms it intends to use.

31       (c) Form of documents and electronically stored information.

32 (c)(1) A party who produces documents for inspection shall produce them as they  
33 are kept in the usual course of business or shall organize and label them to correspond  
34 with the categories in the request.

35 (c)(2) If a request does not specify the form or forms for producing electronically  
36 stored information, a responding party must produce the information in a form or forms  
37 in which it is ordinarily maintained or in a form or forms that are reasonably usable.

38 (c)(3) A party need not produce the same electronically stored information in more  
39 than one form.

40 Advisory Committee Notes

41



1       **Rule 35. Physical and mental examination of persons.**

2       (a) Order for examination. When the mental or physical condition or attribute of a  
3 party or of a person in the custody or control of a party is in controversy, the court may  
4 order the party or person to submit to a physical or mental examination by a suitably  
5 licensed or certified examiner or to produce for examination the person in the party's  
6 custody or control, unless the party is unable to produce the person for examination.  
7 The order may be made only on motion for good cause shown. All papers related to the  
8 motion and notice of any hearing shall be served on a nonparty to be examined. The  
9 order shall specify the time, place, manner, conditions, and scope of the examination  
10 and the person by whom the examination is to be made. The person being examined  
11 may record the examination unless the party requesting the examination shows that the  
12 recording would unduly interfere with the examination.

13       (b) Waiver of privilege. By requesting and obtaining the examiner's report, the party  
14 examined waives any privilege the party may have in that action or any other involving  
15 the same controversy, regarding the testimony of every other person who has examined  
16 or may thereafter examine the party about the same condition. **Question: Does this**  
17 **paragraph fit with the model that expert reports must be disclosed? Seems like the**  
18 **person examined necessarily waives the privilege.**

19       (c) Sanctions. If a party or a person in the custody or under the legal control of a  
20 party fails to obey an order entered under paragraph (a), the court on motion may take  
21 any action authorized by Rule 37(b)(2), except that the failure cannot be treated as  
22 contempt of court.

23

1       **Rule 36. Request for admission.**

2       (a) Request for admission. A party may serve upon any other party a written request  
3 to admit the truth of any discoverable matter set forth in the request, including the  
4 genuineness of any document. The matter must relate to statements or opinions of fact  
5 or of the application of law to fact. Each matter shall be separately stated. During initial  
6 fact discovery, a party may not request admission of more than 25 matters. A copy of  
7 the document shall be served with the request unless it has already been furnished or  
8 made available for inspection and copying. The request shall notify the responding party  
9 that the matters will be deemed admitted unless the party responds within 28 days after  
10 service of the request.

11       (b) Answer or objection.

12       (b)(1) The matter is admitted unless, within 28 days after service of the request, the  
13 responding party serves upon the requesting party a written answer or objection.

14       (b)(2) Unless the answering party objects to a matter, the party must admit or deny  
15 the matter or state in detail the reasons why the party cannot truthfully admit or deny. A  
16 party may identify the part of a matter which is true and deny the rest. A denial shall  
17 fairly meet the substance of the request. Lack of information is not a reason for failure to  
18 admit or deny unless the information known or reasonably available is insufficient to  
19 form an admission or denial. If the truth of a matter is a genuine issue for trial, the  
20 answering party may deny the matter or state the reasons for the failure to admit or  
21 deny.

22       (b)(3) If the party objects to a matter, the party shall state the reasons for the  
23 objection. Any reason not stated is waived unless excused by the court for good cause.  
24 The party shall admit or deny any part of a matter that is not objectionable. It is not  
25 grounds for objection that the truth of a matter is a genuine issue for trial.

26       (c) Sanctions for failure to admit. If a party fails to admit the truth of any discoverable  
27 matter set forth in the request, and if the requesting party proves the truth of the matter,  
28 the requesting party may move for an order requiring the other party to pay the  
29 reasonable expenses of proving the matter, including reasonable attorney fees. The  
30 court shall enter the order unless it finds that:

31       (c)(1) the request was held objectionable;

32 (c)(2) the admission sought was not substantially important;

33 (c)(3) the responding party had reason to believe the truth of the matter was a  
34 genuine issue for trial; or

35 (c)(4) there were other good reasons for the failure to admit.

36 (d) Effect of admission. Any matter admitted under this rule is conclusively  
37 established unless the court on motion permits withdrawal or amendment of the  
38 admission. The court may permit withdrawal or amendment if the presentation of the  
39 merits of the action will be promoted and withdrawal or amendment will not prejudice  
40 the requesting party. Any admission under this rule is for the purpose of the pending  
41 action only. It is not an admission for any other purpose, nor may it be used in any other  
42 action.

43 Advisory Committee Notes

44

1       **Rule 37. Failure to make or cooperate in disclosure or discovery; sanctions.**

2       (a) Motion for order compelling disclosure or discovery.

3       (a)(1) Motion. A party may move to compel disclosure or discovery and for  
4 appropriate sanctions if another party:

5       (a)(1)(A) makes an evasive, incomplete or insufficient disclosure or response to a  
6 request for discovery;

7       (a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement  
8 a disclosure or response or makes a supplemental disclosure or response without an  
9 adequate explanation of why the additional or correct information was not previously  
10 provided;

11       (a)(1)(C) objects to a request for discovery;

12       (a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or

13       (a)(1)(E) otherwise fails to make full and complete disclosure or discovery.

14       (a)(2) Appropriate court. A motion may be made to the court in which the action is  
15 pending, or, on matters relating to a deposition, to the court in the district where the  
16 deposition is being taken. A motion for an order to a nonparty witness shall be made to  
17 the court in the district where the deposition is being taken.

18       (a)(3) The movant must attach a copy of the request for discovery or the response at  
19 issue and a certification that the movant has in good faith conferred or attempted to  
20 confer with the party not making the disclosure or discovery in an effort to secure the  
21 disclosure or discovery without court action.

22       (a)(4) Expenses and sanctions.

23       (a)(4)(A) If the motion is granted, or if the disclosure or discovery is provided after  
24 the motion was filed, the court shall, after opportunity for response, require the party or  
25 witness whose conduct necessitated the motion or the party or attorney advising such  
26 conduct or both of them to pay to the moving party the reasonable expenses incurred in  
27 obtaining the order, including attorney fees, unless the court finds that the movant did  
28 not make a good faith effort to obtain the disclosure or discovery without court action, or  
29 that the nondisclosure, response, or objection was substantially justified, or that other  
30 circumstances make an award of expenses unjust.

31 (a)(4)(B) If the motion is denied, the court may enter any protective order authorized  
32 under Rule 26(c) and shall, after opportunity for response, require the moving party or  
33 the attorney or both of them to pay to the party or witness who opposed the motion the  
34 reasonable expenses incurred in opposing the motion, including attorney fees, unless  
35 the court finds that the motion was substantially justified or that other circumstances  
36 make an award of expenses unjust.

37 (a)(4)(C) If the motion is granted in part and denied in part, the court may enter any  
38 protective order authorized under Rule 26(c) and may, after opportunity for response,  
39 apportion the reasonable expenses incurred in relation to the motion among the parties  
40 and persons in a just manner.

41 (b) Failure to comply with order.

42 (b)(1) Sanctions by court in district where deposition is taken. Failure to follow an  
43 order of the court in the district in which the deposition is being taken is contempt of that  
44 court.

45 (b)(2) Sanctions by court in which action is pending. Unless the court finds that the  
46 failure was substantially justified, the court in which the action is pending may take such  
47 action in regard to the failure to follow its orders as are just, including the following:

48 (b)(2)(A) deem the matter or any other designated facts to be established in  
49 accordance with the claim of the party obtaining the order;

50 (b)(2)(B) prohibit the disobedient party from supporting or opposing designated  
51 claims or defenses or from introducing designated matters into evidence;

52 (b)(2)(C) stay further proceedings until the order is obeyed;

53 (b)(2)(D) dismiss all or part of the action, strike all or part of the pleadings, or render  
54 judgment by default on all or part of the action;

55 (b)(2)(E) order the party or the attorney to pay the reasonable expenses, including  
56 attorney fees, caused by the failure;

57 (b)(2)(F) treat the failure to obey an order, other than an order to submit to a physical  
58 or mental examination, as contempt of court; and

59 (b)(2)(G) instruct the jury regarding an adverse inference.

60 (c) Failure to preserve evidence. Nothing in this rule limits the inherent power of the  
61 court to take any action authorized by paragraph (b)(2) if a party destroys, conceals,

62 alters, tampers with or fails to preserve a document, tangible item, electronic data or  
63 other evidence in violation of a duty. Absent exceptional circumstances, a court may not  
64 impose sanctions under these rules on a party for failing to provide electronically stored  
65 information lost as a result of the routine, good-faith operation of an electronic  
66 information system.

67       Advisory Committee Notes

68