

429 all applicable insurance policies, and any insurance claims documents that address the
430 facts of the case.

431
432 Rule 26C. Disclosure and discovery in employment actions.
433 In actions seeking damages for loss of employment, the claimant shall disclose the
434 names and addresses of employers for five years prior to the date of disclosure, all
435 documents reflective of claimant's efforts to find employment following departure from
436 the defending party's employ; and written waivers allowing the defending party to obtain
437 the claimant's personnel files from each such employer, subject to automatic protective
438 provisions that restrict the use of the materials to the instant litigation. The defending
439 party shall produce the claimant's personnel files and all applicable personnel policies
440 and employee handbooks;

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442 Rule 26D. Disclosure and discovery in nnnnn.

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1 **Rule 26A. Disclosure in domestic relations actions.**

2 (a) Scope. This rule applies to domestic relations actions, including divorce,
3 temporary separation, separate maintenance, parentage and modification. This rule
4 does not apply to adoptions, enforcement of prior orders, cohabitant abuse protective
5 orders, child protective orders and civil stalking injunctions.

6 (b) Time for disclosure. Without waiting for a discovery request, petitioner in all
7 domestic relations actions shall disclose to respondent the documents required in this
8 rule within 40 days after service of the petition unless respondent defaults or consents
9 to entry of the decree. The respondent shall disclose to petitioner the documents
10 required in this rule within 40 days after respondent's answer is due.

11 (c) Financial Declaration. Each party shall disclose to all other parties a fully
12 completed court-approved Financial Declaration and attachments. Each party shall
13 attach to the Financial Declaration the following:

14 (c)(1) For every item and amount listed in the Financial Declaration, excluding
15 monthly expenses, the producing party shall attach copies of statements verifying the
16 amounts listed on the Financial Declaration that are reasonably available to the party.

17 (c)(2) All federal and state income tax returns filed by that party, on behalf of that
18 party, and any returns in which that party has a business, corporate, partnership or trust
19 interest including all W-2s, 1099s, K-1s and all supporting tax schedules for the two tax
20 years before the petition was filed.

21 (c)(3) Pay stubs and other evidence of all earned and un-earned income for the 12
22 months before the petition was filed.

23 (c)(4) All loan applications and financial statements prepared or used by the party
24 within the 12 months before the petition was filed.

25 (c)(5) Documents verifying the value of all real estate in which the party has an
26 interest, including, but not limited to, the most recent appraisal, tax valuation and
27 refinance documents.

28 (c)(6) All statements for the 3 months before the petition was filed for all financial
29 accounts, including, but not limited to checking, savings, money market funds,
30 certificates of deposit, brokerage, investment, retirement, regardless of whether the
31 account has been closed including those held in that party's name, jointly with another

32 person or entity, or as a trustee or guardian, or in someone else's name on that party's
33 behalf.

34 (c)(7) If the foregoing documents are not reasonably available or are in the
35 possession of the other party, the party disclosing the Financial Declaration shall
36 estimate the amounts entered on the Financial Declaration, the basis for the estimation
37 and an explanation why the documents are not available.

38 (d) Certificate of Service. Each party shall file a Certificate of Service with the court
39 certifying that he or she has provided the Financial Declaration and attachments to the
40 other party in compliance with this rule.

41 (e) Exempted agencies. Agencies of the State of Utah are not subject to these
42 disclosure requirements.

43 (f) Sanctions. Failure to fully disclose all assets and income in the Financial
44 Declaration and attachments may subject the non-disclosing party to sanctions under
45 Rule 37 including an award of non-disclosed assets to the other party, attorney's fees or
46 other sanctions deemed appropriate by the court.

47 (g) Failure of a party to comply with this rule does not preclude any other party from
48 obtaining a default judgment, proceeding with the case, or seeking other relief from the
49 court.

50 (h) Notice of the requirements of this rule shall be served on the Respondent and all
51 joined parties with the initial petition.

52 Advisory Committee Notes

53 (c)(3): Refer to statutory definition

1 **Rule 29. Stipulations regarding disclosure and discovery procedure.**

2 ~~Unless the court orders otherwise, the~~ The parties may ~~by written stipulation~~

3 ~~(1) provide that depositions may be taken before any person, at any time or place,~~
4 ~~upon any notice, and in any manner and when so taken may be used like other~~
5 ~~depositions, and~~

6 ~~(2) modify the procedures provided by any provision of~~ these rules for disclosure and
7 discovery, ~~except that stipulations by filing, before the close of the initial fact discovery,~~
8 ~~a stipulated notice of extended discovery and a statement signed by the parties and~~
9 ~~lawyers that the additional discovery is necessary and proportionate and that the parties~~
10 ~~have each party has reviewed and approved a discovery budget. Stipulations~~ extending
11 the time for ~~or limits of~~ disclosure or discovery require ~~the court~~ approval ~~of the court~~ if
12 ~~they the extension~~ would interfere with ~~the time set a court order~~ for completion of
13 discovery or with the date of a hearing or trial.

14 Advisory Committee Notes

15

1 **Rule 30. Depositions ~~upon oral examination.~~**

2 (a) When depositions may be taken; ~~W~~when leave required; no deposition of expert
3 witnesses. A party may depose a party or witness by oral or written questioning. A
4 witness may not be deposed more than once. A party witness may be deposed without
5 a court order. A nonparty witness may be deposed without a court order to produce
6 documents and tangible things and to establish the foundation for evidence. Other
7 nonparty witnesses may be deposed only by court order. A person who may present
8 evidence under Rules 702, 703, or 705 of the Utah Rules of Evidence may not be
9 deposed.

10 (a)(1) ~~A party may take the testimony of any person, including a party, by deposition~~
11 ~~upon oral examination without leave of court except as provided in paragraph (2). The~~
12 ~~attendance of witnesses may be compelled by subpoena as provided in Rule 45.~~

13 (a)(2) ~~A party must obtain leave of court, which shall be granted to the extent~~
14 ~~consistent with the principles stated in Rule 26(b)(3), if the person to be examined is~~
15 ~~confined in prison or if, without the written stipulation of the parties:~~

16 (a)(2)(A) ~~a proposed deposition would result in more than ten depositions being~~
17 ~~taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third party~~
18 ~~defendants;~~

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

20 (a)(2)(C) ~~a party seeks to take a deposition before the time specified in Rule 26(d)~~
21 ~~unless the notice contains a certification, with supporting facts, that the person to be~~
22 ~~examined is expected to leave the state and will be unavailable for examination unless~~
23 ~~deposed before that time. The party or party's attorney shall sign the notice, and the~~
24 ~~signature constitutes a certification subject to the sanctions provided by Rule 11.~~

25 (b) Notice of ~~examination deposition~~; general requirements; special notice; non-
26 stenographic recording; production of documents and things; deposition of organization;
27 deposition by telephone; written questions.

28 (b)(1) ~~A~~ The party ~~desiring to take the deposition of any person upon oral~~
29 ~~examination deposing a witness~~ shall give reasonable notice in writing to every other
30 party ~~to the action~~. The notice shall state the date, time and place for ~~taking~~ the
31 deposition and the name and address of each ~~person to be examined witness~~, if

32 ~~known, and, if~~ If the name of a witness is not known, ~~a general description sufficient the~~
33 notice shall describe the witness sufficiently to identify the person or state the ~~particular~~
34 class or group to which the person belongs. ~~If a subpoena duces tecum is to be served~~
35 ~~on the person to be examined, the designation of the materials to be produced as set~~
36 ~~forth in the subpoena shall be attached to or included in the notice. The notice shall~~
37 designate any documents and tangible things to be produced by a witness. The notice
38 shall designate the officer who will conduct the deposition.

39 (b)(2) The ~~party taking the deposition shall state in the~~ notice shall designate the
40 method by which the ~~testimony shall deposition will~~ be recorded. ~~Unless the court~~
41 ~~orders otherwise, it~~ With prior notice to the officer, witness and other parties, any party
42 may designate a recording method in addition to the method designated in the notice.
43 Depositions may be recorded by sound, sound-and-visual, or stenographic means, and
44 the party ~~taking the deposition designating the recording method~~ shall bear the cost of
45 the recording. The appearance or demeanor of witnesses or attorneys shall not be
46 distorted through recording techniques.

47 ~~(b)(3) With prior notice to the deponent and other parties, any party may designate~~
48 ~~another method to record the deponent's testimony in addition to the method specified~~
49 ~~by the person taking the deposition. The additional record or transcript shall be made at~~
50 ~~that party's expense unless the court otherwise orders.~~

51 ~~(b)(4) Unless otherwise agreed by the parties, a (b)(3) A~~ deposition shall be
52 conducted before an officer appointed or designated under Rule 28 and shall begin with
53 a statement on the record by the officer that includes (A) the officer's name and
54 business address; (B) the date, time and place of the deposition; (C) the name of the
55 deponent witness; (D) the administration of the oath or affirmation to the ~~deponent~~
56 witness; and (E) an identification of all persons present. If the deposition is recorded
57 other than stenographically, the officer shall repeat items (A) through (C) at the
58 beginning of each unit of ~~tape or other the~~ recording medium. ~~The appearance or~~
59 ~~demeanor of deponents or attorneys shall not be distorted through camera or sound-~~
60 ~~recording techniques.~~ At the end of the deposition, the officer shall state on the record
61 that the deposition is complete and shall ~~set forth~~ state any stipulations ~~made by~~

62 ~~counsel concerning the custody of the transcript or recording and the exhibits, or~~
63 ~~concerning other pertinent matters.~~

64 ~~(b)(5)–(b)(4)~~ The notice to a party ~~deponent~~ witness may be accompanied by a
65 request ~~made in compliance with~~ under Rule 34 for the production of documents and
66 tangible things at the ~~taking of the~~ deposition. The procedure of Rule 34 shall apply to
67 the request. The attendance of a nonparty witness may be compelled by subpoena
68 under Rule 45. Documents and tangible things to be produced shall be stated in the
69 subpoena.

70 ~~(b)(6)–(b)(5)~~ A party may ~~in the notice and in a subpoena~~ name as the ~~deponent~~
71 witness a ~~public or private~~ corporation, a partnership, an association, or a governmental
72 agency, ~~and~~ describe with reasonable particularity the matters on which examination
73 questioning is requested. ~~In that event,~~ and direct the organization ~~so named shall to~~
74 designate one or more officers, directors, managing agents, or other persons ~~who~~
75 ~~consent~~ to testify on its behalf ~~and may set forth.~~ The organization shall state, for each
76 person designated, the matters on which the person will testify. A subpoena shall advise
77 a nonparty organization of its duty to make such a designation. ~~The persons so~~
78 ~~designated shall testify as to matters known or reasonably available to the organization.~~
79 ~~This Subdivision (b)(6) does not preclude taking a deposition by any other procedure~~
80 ~~authorized in these rules.~~

81 ~~(b)(7)~~ ~~The parties may stipulate in writing or the court may upon motion order that a~~
82 ~~(b)(6)~~ A deposition may be taken by remote electronic means. ~~For the purposes of this~~
83 ~~rule and Rules 28(a), 37(b)(1), and 45(d), a~~ A deposition taken by remote electronic
84 means is considered to be taken at the place where the ~~deponent witness is to~~ answers
85 questions.

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

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

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

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

91 (b)(7)(D) Within 14 days after the questions are served, a party may serve cross
92 questions. Within 7 days after being served with cross questions, a party may serve

93 redirect questions. Within 7 days after being served with redirect questions, a party may
94 serve recross questions.

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

96 (c) Examination and cross-examination; ~~record of examination; oath;~~ objections.

97 (c)(1) Examination and cross-examination Questioning of witnesses may proceed as
98 permitted at the trial under ~~the provisions of~~ the Utah Rules of Evidence, except Rules
99 103 and 615. ~~The officer before whom the deposition is to be taken shall put the~~
100 ~~witnesses on oath or affirmation and shall personally, or by someone acting under the~~
101 ~~officer's direction and in the officer's presence, record the testimony of the witness.~~

102 (c)(2) All objections ~~made at the time of the examination to the qualifications of the~~
103 ~~officer taking the deposition, to the manner of taking it, to the evidence presented, or to~~
104 ~~the conduct of any party and any other objection to the proceedings~~ shall be noted by
105 the officer upon the record of the deposition recorded, but the ~~examination questioning~~
106 shall proceed, with and the testimony ~~being~~ taken subject to the objections. ~~In lieu of~~
107 ~~participating in the oral examination, parties may serve written questions in a sealed~~
108 ~~envelope on the party taking the deposition, and the party taking the deposition shall~~
109 ~~transmit them to the officer, who shall propound them to the witness and record the~~
110 ~~answers verbatim.~~

111 ~~(d) Schedule and duration; motion to terminate or limit examination.~~

112 (d)(1) Any objection ~~to evidence during a deposition~~ shall be stated concisely and in
113 a non-argumentative and non-suggestive manner. A person may instruct a ~~deponent~~
114 witness not to answer only ~~when necessary~~ to preserve a privilege, to enforce a
115 limitation on evidence directed by the court, or to present a motion for a protective order
116 under paragraph (4) Rule 26(c). Upon demand of the objecting party or witness, the
117 deposition shall be suspended for the time necessary to make a motion. The party
118 taking the deposition may complete or adjourn the deposition before moving for an
119 order to compel discovery under Rule 37.

120 ~~(d)(2) Unless otherwise authorized by the court or stipulated by the parties, a~~
121 ~~deposition is limited to one day of seven hours. The court must allow additional time~~
122 ~~consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the~~
123 ~~deponent or another person, or other circumstance, impedes or delays the examination.~~

124 ~~(d)(3) If the court finds that any impediment, delay, or other conduct has frustrated~~
125 ~~the fair examination of the deponent, it may impose upon the persons responsible an~~
126 ~~appropriate sanction, including the reasonable costs and attorney fees incurred by any~~
127 ~~parties as a result thereof.~~

128 ~~(d)(4) At any time during the taking of the deposition, on motion of a party or of the~~
129 ~~deponent and upon a showing that the examination is being conducted in bad faith or in~~
130 ~~such manner as unreasonably to annoy, embarrass, or oppress the deponent or party,~~
131 ~~the court in which the action is pending or the court in the district where the deposition is~~
132 ~~being taken may order the officer conducting the examination to cease forthwith from~~
133 ~~taking the deposition, or may limit the scope and manner of the taking of the deposition~~
134 ~~as provided in Rule 26(c). If the order made terminates the examination, it shall be~~
135 ~~resumed thereafter only upon the order of the court in which the action is pending. Upon~~
136 ~~demand of the objecting party or deponent, the taking of the deposition shall be~~
137 ~~suspended for the time necessary to make a motion for an order. The provisions of Rule~~
138 ~~37(a)(4) apply to the award of expenses incurred in relation to the motion.~~

139 (d) Limits. During initial fact discovery, each side (plaintiffs collectively, defendants
140 collectively, and third-party defendants collectively) may not take more than is limited to
141 20 hours of deposition by oral questioning. Oral questioning of a nonparty shall not
142 exceed four hours, and oral questioning of a party shall not exceed seven hours. A
143 deposition by written questioning shall not cumulatively exceed 15 questions, including
144 discrete subparts, by the plaintiffs collectively, by the defendants collectively or by third-
145 party defendants collectively.

146 (e) Submission to witness; changes; signing. ~~If requested by the deponent or a party~~
147 ~~before completion of the deposition, the deponent shall have 30~~ Within 28 days after
148 being notified by the officer that the transcript or recording is available, ~~in which to~~
149 ~~review the transcript or recording and, if there are changes in form or substance, to a~~
150 ~~witness may sign a statement reciting such of changes to the form or substance of the~~
151 ~~transcript or recording and the reasons given by the deponent for making them for the~~
152 ~~changes.~~ The officer ~~shall indicate in the certificate prescribed by subdivision (f)(1)~~
153 ~~whether any review was requested and, if so, shall append any changes~~ timely made by
154 ~~the deponent during the period allowed~~ witness.

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

156 (f)(1) ~~The transcript or other recording of the deposition made in accordance with~~
157 ~~this rule shall be the record of the deposition. The officer shall record the deposition or~~
158 ~~direct another person present to record the deposition.~~ The officer shall sign a
159 certificate, to accompany the record ~~of the deposition~~, that the witness was ~~duly sworn~~
160 ~~under oath or affirmation~~ and that the ~~transcript or other recording record~~ is a true
161 record of the ~~testimony given by the witness deposition~~. ~~Unless otherwise ordered by~~
162 ~~the court, the~~ The officer shall keep a copy of the record. The officer shall securely seal
163 the record ~~of the deposition in an envelope~~ endorsed with the title of the action and
164 marked "Deposition of (name). Do not open." and shall promptly send the sealed record
165 ~~of the deposition~~ to the attorney or the party who ~~arranged for the transcript or other~~
166 ~~record to be made~~ designated the recording method. ~~If the party taking the deposition is~~
167 ~~not represented by an attorney, the record of the deposition shall be sent to the clerk of~~
168 ~~the court for filing unless otherwise ordered by the court.~~ An attorney or party receiving
169 the record ~~of the deposition~~ shall store it under conditions that will protect it against loss,
170 destruction, tampering, or deterioration.

171 (f)(2) ~~Documents~~ Every party may inspect and copy documents and things produced
172 for inspection ~~during the examination of the witness shall, upon and must have a fair~~
173 ~~opportunity to compare copies and originals. Upon~~ the request of a party, documents
174 and things produced for inspection shall be marked for identification and ~~annexed~~
175 ~~added~~ to the record ~~of the deposition and may be inspected and copied by any party,~~
176 ~~except that, if~~ If the ~~person producing the materials desires~~ witness wants to retain them
177 ~~the originals~~, that person ~~may (A) shall offer copies~~ the originals to be copied, marked
178 for identification and ~~annexed~~ added to the record ~~of the deposition and to serve~~
179 ~~thereafter as originals, if the person affords to all parties fair opportunity to verify the~~
180 ~~copies by comparison with the originals, or (B) offer the originals to be marked for~~
181 ~~identification, after giving to each party an opportunity to inspect and copy them, in~~
182 ~~which event the originals may be used in the same manner as if annexed to the record~~
183 ~~of the deposition. Any party may move for an order that the originals be annexed to and~~
184 ~~returned with the record of the deposition to the court, pending final disposition of the~~
185 ~~case.~~

186 (f)(3) ~~Unless otherwise ordered by the court or agreed by the parties, the officer shall~~
187 ~~retain stenographic notes of any depositions taken stenographically or a copy of the~~
188 ~~recording of any deposition taken by another method.~~ Upon payment of reasonable
189 charges ~~therefor~~, the officer shall furnish a copy of the record ~~of the deposition~~ to any
190 party or to the ~~deponent~~ witness. ~~Any party or the deponent may arrange for a~~
191 ~~transcription to be made from the recording of a deposition taken~~ An official transcript of
192 a recording made by non-stenographic means shall be prepared under Utah Rule of
193 Appellate Procedure 11(e).

194 (g) Failure to attend or to serve subpoena; expenses.

195 ~~(g)(1) If the party giving the notice of the taking of a deposition fails to attend and~~
196 ~~proceed therewith or fails to serve a subpoena upon a witness who fails to attend, and~~
197 another party attends in person or by attorney ~~pursuant to the notice~~, the court may
198 order the party giving the notice to pay to ~~such the~~ other party the reasonable costs,
199 ~~expenses incurred by him and his attorney in attending, including reasonable attorney's~~
200 fees and attorney fees incurred.

201 ~~(g)(2) If the party giving the notice of the taking of a deposition of a witness fails to~~
202 ~~serve a subpoena upon him and the witness because of such failure does not attend,~~
203 ~~and if another party attends in person or by attorney because he expects the deposition~~
204 ~~of that witness to be taken, the court may order the party giving the notice to pay to~~
205 ~~such other party the reasonable expenses incurred by him and his attorney in attending,~~
206 ~~including reasonable attorney's fees.~~

207 Advisory Committee Notes

208

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. Interrogatories Written questions to parties.**

2 (a) Availability; procedures for use. ~~Without leave of court or written stipulation,~~
3 During initial fact discovery, any party may serve upon any other party up to 15 written
4 interrogatories, not exceeding 25 in number questions, including all discrete subparts, ~~to~~
5 ~~be answered by the party served or, if the party served is a public or private corporation,~~
6 ~~a partnership, an association, or a governmental agency, by any officer or agent, who~~
7 ~~shall furnish such information as is available to the party. Leave to serve additional~~
8 ~~interrogatories shall be granted to the extent consistent with the principles of Rule~~
9 ~~26(b)(3). Without leave of court or written stipulation, interrogatories may not be served~~
10 ~~before the time specified in Rule 26(d).~~

11 (b) Answers and objections.

12 ~~(b)(1) Each interrogatory question shall be answered separately and fully in writing~~
13 ~~under oath, or affirmation unless it is objected to, ~~in which event the objecting~~ If a~~
14 ~~question is objected to, the party shall state the reasons for the objection ~~and. Any~~~~
15 ~~reason not stated is waived unless excused by the court for good cause. The party shall~~
16 ~~answer to the extent the interrogatory any part of a question that is not objectionable. A~~
17 ~~question is not objectionable merely because an answer involves an opinion or~~
18 ~~argument that relates to fact or the application of law to fact.~~

19 ~~(b)(2) The answering party shall serve the answers ~~are to be signed by the person~~~~
20 ~~making them, and the objections signed by the attorney making them and objections~~
21 ~~within 28 days after service of the questions.~~

22 ~~(b)(3) The party upon whom the interrogatories have been served shall serve a copy~~
23 ~~of the answers and objections, if any, within 30 days after the service of the~~
24 ~~interrogatories. A shorter or longer time may be ordered by the court or, in the absence~~
25 ~~of such an order, agreed to in writing by the parties subject to Rule 29.~~

26 ~~(b)(4) All grounds for an objection to an interrogatory shall be stated with specificity.~~
27 ~~Any ground not stated in a timely objection is waived unless the party's failure to object~~
28 ~~is excused by the court for good cause shown.~~

29 ~~(b)(5) The party submitting the interrogatories may move for an order under Rule~~
30 ~~37(a) with respect to any objection to or other failure to answer an interrogatory.~~

31 (c) Scope; use at trial. Interrogatories Questions may relate to any discoverable
32 ~~matters which can be inquired into under Rule 26(b), and the answers.~~ Answers may be
33 used ~~to the extent as~~ permitted by the Rules of Evidence.

34 ~~An interrogatory otherwise proper is not necessarily objectionable merely because~~
35 ~~an answer to the interrogatory involves an opinion or contention that relates to fact or~~
36 ~~the application of law to fact, but the court may order that such an interrogatory need~~
37 ~~not be answered until after designated discovery has been completed or until a pretrial~~
38 ~~conference or other later time.~~

39 (d) Option to produce business records. ~~Where if~~ the answer to ~~an interrogatory a~~
40 question may be ~~derived or ascertained from~~ found by inspecting the answering party's
41 business records, including electronically stored information, ~~of the party upon whom~~
42 ~~the interrogatory has been served or from an examination, audit, or inspection of such~~
43 ~~business records, including a compilation, abstract, or summary thereof~~ and the burden
44 of ~~deriving or ascertaining finding~~ the answer is substantially the same for ~~the party~~
45 ~~serving the interrogatory as for the party served~~ both parties, it is a sufficient answer to
46 ~~such interrogatory to specify the answering party may identify~~ the records from which
47 the answer may be ~~derived or ascertained and to afford to~~ found. ~~The answering party~~
48 must give the asking party ~~serving the interrogatory~~ reasonable opportunity to examine,
49 audit, or inspect such inspect the records and to make copies, compilations, abstracts,
50 or summaries. ~~A specification shall be~~ The answering party must identify the records in
51 sufficient detail to permit the ~~interrogating asking~~ party to locate and to identify; them as
52 readily as ~~can~~ the answering party ~~served, the records from which the answer may be~~
53 ascertained.

54 Advisory Committee Notes

55

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

3 (a) Scope. ~~Any party may serve on any other party a request~~

4 (a)(1) ~~Any party may serve on any other party a request~~ to produce and permit the
5 ~~requesting~~ party ~~making the request, or someone acting on his behalf,~~ to inspect, copy,
6 test or sample any designated discoverable documents, ~~or~~ electronically stored
7 information or tangible things (including writings, drawings, graphs, charts, photographs,
8 sound recordings, images, and other data or data compilations stored in any medium
9 from which information can be obtained, translated, if necessary, by the respondent into
10 reasonably usable form), ~~or to inspect, copy, test or sample any designated tangible~~
11 ~~things which constitute or contain matters within the scope of Rule 26(b) and which are~~
12 in the possession, ~~custody~~ or control of the responding party ~~upon whom the request is~~
13 ~~served; or.~~

14 (a)(2) ~~Any party may serve on any other party a request~~ to permit entry upon
15 designated ~~land or other~~ property in the possession or control of the responding party
16 ~~upon whom the request is served~~ for the purpose of ~~inspection and inspecting,~~
17 measuring, surveying, photographing, testing, or sampling the property or any
18 designated discoverable object or operation ~~thereon, within the scope of Rule 26(b) on~~
19 ~~the property.~~

20 (b) Procedure and limitations.

21 (b)(1) The request shall ~~set forth~~ identify the items to be inspected ~~either~~ by
22 individual item or by category, and describe each item and category with reasonable
23 particularity. During initial fact discovery, the request shall not cumulatively include more
24 than 25 distinct items or categories of items. The request shall specify a reasonable
25 date, time, place, and manner of making the inspection and performing the related acts.
26 The request may specify the form or forms in which electronically stored information is
27 to be produced. ~~Without leave of court or written stipulation, a request may not be~~
28 ~~served before the time specified in Rule 26(d).~~

29 (b)(2) The responding party ~~upon whom the request is served~~ shall serve a written
30 response within 30-28 days after ~~the~~ service of the request. ~~A shorter or longer time~~
31 ~~may be directed by the court or, in the absence of such an order, agreed to in writing by~~

32 ~~the parties, subject to Rule 29.~~ The response shall state, with respect to each item or
33 category, that inspection and related activities_acts will be permitted as requested,
34 unless_or_that the request is objected to, ~~including an objection to the requested form or~~
35 ~~forms for producing electronically stored information, stating~~ If the party objects to a
36 request, the party must state the reasons for the objection. ~~If objection is made to part of~~
37 ~~an item or category, the part shall be specified and inspection permitted of the~~
38 ~~remaining parts. If objection is made~~ Any reason not stated is waived unless excused by
39 the court for good cause. The party shall identify and permit inspection of any part of a
40 request that is not objectionable. If the party objects to the requested form or forms for
41 producing electronically stored information -- or if no form was specified in the request --
42 the responding party must state the form or forms it intends to use. ~~The party submitting~~
43 ~~the request may move for an order under Rule 37(a) with respect to any objection to or~~
44 ~~other failure to respond to the request or any part thereof, or any failure to permit~~
45 ~~inspection as requested.~~

46 ~~(b)(3) Unless the parties otherwise agree or the court otherwise orders:~~

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

48 ~~(b)(3)(A) a~~ (c)(1) A party who produces documents for inspection shall produce them
49 as they are kept in the usual course of business or shall organize and label them to
50 correspond with the categories in the request;_

51 ~~(b)(3)(B) if~~ (c)(2) If a request does not specify the form or forms for producing
52 electronically stored information, a responding party must produce the information in a
53 form or forms in which it is ordinarily maintained or in a form or forms that are
54 reasonably usable;_ ~~and~~

55 ~~(b)(3)(C) a~~ (c)(3) A party need not produce the same electronically stored
56 information in more than one form.

57 ~~(c) Persons not parties. This rule does not preclude an independent action against a~~
58 ~~person not a party for production of documents and things and permission to enter upon~~
59 ~~land.~~

60 Advisory Committee Notes

61

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

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

15 ~~(b) Report of examining physician.~~

16 ~~(b)(1) If requested by a party against whom an order is made under Rule 35(a) or~~
17 ~~the person examined, the party causing the examination to be made shall deliver to the~~
18 ~~person examined and/or the other party a copy of a detailed written report of the~~
19 ~~examiner setting out the examiner's findings, including results of all tests made,~~
20 ~~diagnosis and conclusions, together with like reports of all earlier examinations of the~~
21 ~~same condition. After delivery the party causing the examination shall be entitled upon~~
22 ~~request to receive from the party against whom the order is made a like report of any~~
23 ~~examination, previously or thereafter made, of the same condition, unless, in the case of~~
24 ~~a report of examination of a person not a party, the party shows that the report cannot~~
25 ~~be obtained. The court on motion may order delivery of a report on such terms as are~~
26 ~~just. If an examiner fails or refuses to make a report, the court on motion may take any~~
27 ~~action authorized by Rule 37(b)(2).~~

28 ~~(b)(2) (b) Waiver of privilege.~~ By requesting and obtaining ~~a report of the~~
29 ~~examination so ordered or by taking the deposition of the examiner~~ the examiner's
30 report, the party examined waives any privilege the party may have in that action or any
31 other involving the same controversy, regarding the testimony of every other person

32 who has examined or may thereafter examine the party ~~in respect of about~~ the same
33 ~~mental or physical~~ condition. Question: Does this paragraph fit with the model that
34 expert reports must be disclosed? Seems like the person examined necessarily waives
35 the privilege.

36 ~~(b)(3) This subdivision applies to examinations made by agreement of the parties,~~
37 ~~unless the agreement expressly provides otherwise. This subdivision does not preclude~~
38 ~~discovery of a report of any other examiner or the taking of a deposition of an examiner~~
39 ~~in accordance with the provisions of any other rule.~~

40 ~~(c) Right of party examined to other medical reports. At the time of making an order~~
41 ~~to submit to an examination under Subdivision (a), the court shall, upon motion of the~~
42 ~~party to be examined, order the party seeking such examination to furnish to the party to~~
43 ~~be examined a report of any examination previously made or medical treatment~~
44 ~~previously given by any examiner employed directly or indirectly by the party seeking~~
45 ~~the order for a physical or mental examination, or at whose instance or request such~~
46 ~~medical examination or treatment has previously been conducted.~~

47 ~~(d)(c)~~ Sanctions.

48 ~~(d)(1)~~ If a party or a person in the custody or under the legal control of a party fails to
49 obey an order entered under ~~Subdivision paragraph~~ (a), the court on motion may take
50 any action authorized by Rule 37(b)(2), except that the failure cannot be treated as
51 contempt of court.

52 ~~(d)(2)~~ If a party fails to obey an order entered under Subdivision (c), the court on
53 motion may take any action authorized by Rule 37(b)(2).

54

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

2 (a) Request for admission.

3 ~~(a)(1)~~ A party may serve upon any other party a written request ~~for the admission,~~
4 ~~for purpose of the pending action only, of to admit~~ the truth of any discoverable matters
5 ~~within the scope of Rule 26(b)~~ set forth in the request ~~that, including the genuineness of~~
6 any document. The matter must relate to statements or opinions of fact or of the
7 application of law to fact, ~~including the genuineness of any documents described in the~~
8 request. Each matter shall be separately stated. During initial fact discovery, a party
9 may not request admission of more than 25 matters. A copy of the document shall be
10 served with the request unless it has already been furnished or made available for
11 inspection and copying. The request ~~for admission shall contain a notice advising notify~~
12 the responding party ~~to whom the request is made that, pursuant to Rule 36, the~~
13 matters shall will be deemed admitted unless ~~said request is responded to the party~~
14 responds within ~~30-28~~ days after service of the request ~~or within such shorter or longer~~
15 time as the court may allow. Copies of documents shall be served with the request
16 unless they have been or are otherwise furnished or made available for inspection and
17 copying. Without leave of court or written stipulation, requests for admission may not be
18 served before the time specified in Rule 26(d).

19 (b) Answer or objection.

20 ~~(b)(1) (a)(2)~~ Each matter of which an admission is requested shall be separately set
21 ~~forth.~~ The matter is admitted unless, within ~~thirty-28~~ days after service of the request, ~~or~~
22 ~~within such shorter or longer time as the court may allow,~~ the responding party ~~to whom~~
23 ~~the request is directed~~ serves upon the requesting party ~~requesting the admission a~~
24 written answer or objection, ~~addressed to the matter, signed by the party or by his~~
25 ~~attorney, but, unless the court shortens the time, a defendant shall not be required to~~
26 ~~serve answers or objections before the expiration of 45 days after service of the~~
27 ~~summons and complaint upon him. If objection is made, the reasons therefor shall be~~
28 ~~stated. The answer shall specifically deny the matter or set forth in detail the reasons~~
29 ~~why the answering party cannot truthfully admit or deny the matter. A denial shall fairly~~
30 ~~meet the substance of the requested admission, and when good faith requires that a~~
31 ~~party qualify his answer or deny only a part of the matter of which an admission is~~

32 requested, he shall specify so much of it as is true and qualify or deny the remainder.
33 An answering party may not give lack of information or knowledge as a reason for
34 failure to admit or deny unless he states that he has made reasonable inquiry and that
35 the information known or readily obtainable by him is insufficient to enable him to admit
36 or deny. A party who considers that a matter of which an admission has been requested
37 presents a genuine issue for trial may not, on that ground alone, object to the request;
38 he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons
39 why he cannot admit or deny it.

40 ~~(a)(3) The party who has requested the admissions may move to determine the~~
41 ~~sufficiency of the answers or objections. Unless the court determines that an objection~~
42 ~~is justified, it shall order that an answer be served. If the court determines that an~~
43 ~~answer does not comply with the requirements of this rule, it may order either that the~~
44 ~~matter is admitted or that an amended answer be served. The court may, in lieu of~~
45 ~~these orders, determine that final disposition of the request be made at a pretrial~~
46 ~~conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to~~
47 ~~the award of expenses incurred in relation to the motion.~~

48 (b)(2) Unless the answering party objects to a matter, the party must admit or deny
49 the matter or state in detail the reasons why the party cannot truthfully admit or deny. A
50 party may identify the part of a matter which is true and deny the rest. A denial shall
51 fairly meet the substance of the request. Lack of information is not a reason for failure to
52 admit or deny unless the information known or reasonably available is insufficient to
53 form an admission or denial. If the truth of a matter is a genuine issue for trial, the
54 answering party may deny the matter or state the reasons for the failure to admit or
55 deny.

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

60 (c) Sanctions for failure to admit. If a party fails to admit the truth of any discoverable
61 matter set forth in the request, and if the requesting party proves the truth of the matter,
62 the requesting party may move for an order requiring the other party to pay the

123 ~~lieu of this sanction, the court on motion may take any action authorized by Subdivision~~
124 ~~(b)(2).~~

125 ~~(g)-(c)~~ Failure to preserve evidence. Nothing in this rule limits the inherent power of
126 the court to take any action authorized by ~~Subdivision paragraph~~ (b)(2) if a party
127 destroys, conceals, alters, tampers with or fails to preserve a document, tangible item,
128 electronic data or other evidence in violation of a duty. Absent exceptional
129 circumstances, a court may not impose sanctions under these rules on a party for failing
130 to provide electronically stored information lost as a result of the routine, good-faith
131 operation of an electronic information system.

132 Advisory Committee Notes

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