

# Agenda

## Advisory Committee on Rules of Civil Procedure

January 27, 2010  
4:00 to 6:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Education Room, Suite N31

|  |       |               |
|--|-------|---------------|
| Approval of minutes                          | Tab 1 | Fran Wikstrom |
| Introduction of all members.                 |       | Fran Wikstrom |
| Objection to commissioner's recommendations. | Tab 2 | Tim Shea      |
| Rule 58B. Satisfaction of judgment.          | Tab 3 | Tim Shea      |
| Simplified Civil Procedures                  | Tab 4 | Fran Wikstrom |

**Committee Web Page:** <http://www.utcourts.gov/committees/civproc/>

### Meeting Schedule

February 24, 2010  
March 24, 2010  
April 28, 2010  
May 26, 2010  
June 23, 2010  
September 22, 2010  
October 27, 2010  
November 17, 2010

# Tab 1

## MINUTES

### UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, November 18, 2009  
Administrative Office of the Courts  
Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Derrek P. Pullan, Jonathan O. Hafen, Lori Woffinden, W. Cullen Battle, David W. Scofield, Terrie T. McIntosh, Leslie W. Slauch, Honorable Lyle R. Anderson, Honorable Anthony B. Quinn, Janet H. Smith, Francis J. Carney, Trystan B. Smith

ABSENT: Barbara L. Townsend, Honorable David O. Nuffer, Lincoln L. Davies, James T. Blanch

STAFF: Timothy M. Shea, Sammi V. Anderson

#### **I. APPROVAL OF MINUTES.**

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the September 23, 2009 minutes. No comments were made and Mr. Wikstrom asked for a motion that the minutes be approved. The motion was duly made and seconded, and unanimously approved.

#### **II. RULE 65C. FINAL RECOMMENDATIONS.**

Mr. Wikstrom explained that Rule 65C had been published for comment. A motion to submit Rule 65C as amended was duly made and seconded, and unanimously approved.

#### **III. RULE 64D. ANSWERS TO GARNISHMENT INTERROGATORIES.**

Ms. Woffinden proposed that Rule 64D be amended to eliminate the need for filing Answers to Garnishment Interrogatories. She explained that the Clerk's Office is exploring ways to cut down on paperwork. The clerks do not review the Answers, and judges also generally do not, absent a challenge. Mr. Slauch requested that Answers to Garnishment Interrogatories be made part of any request for hearing. Mr. Wikstrom suggested amending Rule 64D(h)(1) to require that Answers be attached to any request for hearing. Ms. Woffinden moved for amendment of Rule 64D consistent with the Committee's discussion. The motion was duly seconded and unanimously approved.

#### **IV. RULE 58B. SATISFACTION OF JUDGMENT.**

Mr. Shea led a discussion regarding proposed changes to Rule 58B. The proposed

amendments were previously circulated among collections lawyers, who were generally supportive. Mr. Shea explained that the primary purpose of the proposed amendments is to delete unnecessary language and to simplify the process. The Committee discussed additional changes including language intended to address any distinction between judgment creditor and the judgment owner. The Committee's concern was that if a party is not the original judgment creditor, that the party be required to submit proof of ownership of the judgment along with the Satisfaction of Judgment. Mr. Wikstrom asked Mr. Shea to make the changes discussed and to bring it back for further action at the next meeting.

## **V. REPORT ON FALL FORUM DISCUSSION ON SIMPLIFIED RULES.**

Judge Pullan and Messrs. Hafen, Carney and Blanch reported to the Committee on the Fall Forum discussion regarding simplifying the Rules of Civil Procedure. The group reported that attorneys generally liked the idea of proportionality and agreed that active early judicial involvement is helpful. Attorneys are skeptical that judicial involvement will occur, however, in light of heavy judicial case loads and staffing deficiencies. Mr. Hafen pointed out that the frustration was not because attorneys like the system as it currently exists. To the contrary, lawyers appear to agree that things need to be fixed – they are just not sure how to fix it and there is significant debate on how to go about this. Many suggested simply raising the small claim limit, including up to \$100,000. Judge Pullan noted that people seem to agree with managing different cases differently, that one set of rules does not necessarily fit all cases.

## **VI. DISCUSSION ON SIMPLIFIED RULES.**

Ms. McIntosh questioned whether the Committee may be going beyond the core mission statement earlier articulated regarding rule changes. This prompted Committee discussion on the scope of the proposed simplifications. Ms. McIntosh talked about case law developed around existing language and noted the ramifications of unintended consequences. Mr. Shea challenged the Committee to go further and to simplify the language of the rules to make them more user-friendly. Judge Quinn stated that he favors stability in the rules, noting his observation that it takes considerable time for rule changes to trickle down to all practitioners. Judge Quinn noted it is sometimes preferable to have stable rules as opposed to perfect rules.

Mr. Slaugh asked about the increasing number of pro se litigants. Mr. Shea stated that part of his job is the communication of various laws, forms, explanations, etc., to pro se litigants - this informs his approach. Judge Pullan emphasized that the genesis of this process is the question of how to get access to courts for people that have only \$50,000 at stake - people to whom that is a lot of money. Judge Pullan emphasized that tinkering will not get it done, that discovery is too expensive even with the proposed changes. Judge Pullan stated that we need a set of rules targeted at that case type. The Committee discussed a pilot project to test the simplified rules. Mr. Wikstrom pointed out that a problem with the pilot project is that lawyers and parties would be subject to one set of rules in one forum and a different set of rules elsewhere. Mr. Slaugh advocated cleaning up the language now to reinforce substantive changes and to have it all done at once.

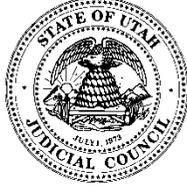
Mr. Wikstrom asked the Committee for thoughts regarding the model that is driving the changes now: Front-end loaded disclosure of documents and witnesses. This will be the respective parties' cases in chief. Disclosures will be followed by a limited quantity and time frame for discovery. If it is a big, complex case, or if a party can convince the judge otherwise, parties will opt out of the simplified rules and engage in traditional discovery. If opting out, lawyers will have to certify to the court that they have reviewed the discovery budget with the client and the client is on board with the fees and costs. Mr. Wikstrom argued that clients and the market will enforce this mechanism. Judge Quinn predicted that most cases will simply opt out. Mr. Slauch disagreed. His sense is that people agree to discovery because they think the judge will allow it, even if they fight it. Mr. Slauch stated that under these changes, the default as to what constitutes adequate discovery will be different - attorneys will be more likely to refuse anything beyond the core disclosures and limited discovery because they believe the judge will back them up. Judge Pullan described the cultural shift as from a scenario where a party gets everything they can show is reasonably likely to lead to anything, to one where a party gets nothing beyond up-front disclosures, unless they can show a need and that the information sought is proportional. Mr. Battle noted the practitioner's preference for gradual change. Judge Pullan said the model is right and that it will effect a cultural change. Mr. Wikstrom's personal feeling is the system is broken and that it has created a whole generation of lawyers that know nothing more than how to discover. As a result only wealthy parties get access to justice. Mr. Wikstrom emphasized that at a minimum, the changes would require a strong consensus of this Committee. Mr. Wikstrom sought to confirm that consensus exists. The Committee expressed renewed willingness to proceed.

The Committee discussed specific proposed changes. It expressed consensus to eliminate the 10 day summons. Mr. Shea led a discussion regarding changes to the Rule 8 pleading requirements. The Committee expressed the desire to incorporate a notice-plus pleading standard to complement the front-end initial disclosures anticipated under the simplified rules. The idea is that the Complaint and Answer contain sufficient detail regarding the factual and legal bases for the claims and defenses such that, when considered in conjunction with the disclosures, parties can generally appraise the other side's case without need of significant additional discovery. Judge Quinn and Mr. Wikstrom suggested that the amended Rule 8 include a Committee Note to clarify that the purpose of the amendment is not to impose technical pleading requirements (and not to encourage motions to dismiss), but to alleviate the need for extensive discovery. The Committee also discussed proposed changes regarding expert disclosures, including their application to treating physicians. Mr. Carney suggested that the amended rule track Federal Rule 26 as it pertains to treating physicians. Mr. Wikstrom asked Mr. Shea to make the changes suggested by the Committee and to circulate a clean copy of the amended rule.

## **VI. ADJOURNMENT.**

The meeting adjourned at 6:00 p.m. The next meeting will be held at 4:00 p.m. on Wednesday, January 27, 2010, at the Administrative Office of the Courts.

# Tab 2



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Civil Procedures Committee  
**From:** Tim Shea *TS*  
**Date:** January 20, 2010  
**Re:** Objection to court commissioner's recommendation

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The attached rule was originally proposed by the commissioners of the Second District Court as a local rule. Every group that reviewed it approved it and recommended it for statewide application (i.e., Districts 1 – 4). Eventually, the Judicial Council suggested that it be considered as a rule of civil procedure.

I have changed the original version to conform to our 7/14/21-day time frames. And I have added paragraph (b), which is borrowed from Rule 59, grounds for a motion for a new trial. I circulated an earlier version among the court commissioners and incorporated their changes.

If we use Rule 26A for the Family Law Section's proposal for disclosure, Rule 108 is available for this topic.

Encl. Rule 108. Objection to court commissioner's recommendation

copy: Debra Moore

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

1 **Rule 108. Objection to court commissioner's recommendation.**

2 (a) A recommendation of a court commissioner is the order of the court until  
3 modified by the court. A party may file a written objection to the recommendation within  
4 14 days after the recommendation is made in open court or, if the court commissioner  
5 takes the matter under advisement, within 14 days after the minute entry of the  
6 recommendation is served.

7 (b) The objection must specify the part of the recommendation to which objection is  
8 made and state succinctly and with particularity the relief sought and the grounds for the  
9 relief sought. The objecting party may claims as grounds:

10 (b)(1) irregularity in the proceeding before the commissioner or abuse of discretion  
11 by which either party was prevented from having a fair proceeding;

12 (b)(2) accident or surprise, which ordinary prudence could not have guarded against;

13 (b)(3) newly discovered evidence material for the objecting party that could not, with  
14 reasonable diligence, have been discovered and produced at the proceeding before the  
15 commissioner;

16 (b)(4) new evidence material for the objecting party based on a substantial change  
17 of circumstances since the proceeding before the commissioner and judicial economy is  
18 better served by presenting the new evidence to the judge rather than to the  
19 commissioner;

20 (b)(5) insufficient evidence to justify the recommendation; and

21 (b)(6) error in law.

22 (c) A party challenging a finding of fact must marshal all record evidence and  
23 proffers of evidence that support the challenged finding.

24 (d) If the parties proffered evidence to the commissioner, the judge may hold an  
25 evidentiary hearing upon the request of a party. If the commissioner held an evidentiary  
26 hearing, the judge will review the record of the hearing.

27 (e) The judge shall give no deference to the commissioner's findings of fact or  
28 conclusions of law.

29 (f) The time for filing, length and content of memoranda, affidavits, and request to  
30 submit for decision are as stated for motions in Rule 7.

31

# Tab 3

1 **Rule 58B. Satisfaction of judgment.**

2 (a) Satisfaction ~~by owner or attorney~~. A judgment may be satisfied, ~~in whole or in~~  
3 ~~part, as to any or all of the judgment debtors,~~ by the owner ~~thereof,~~ or ~~by the~~ owner's  
4 ~~attorney of record of the judgment creditor where no assignment of the judgment has~~  
5 ~~been filed and such attorney executes such satisfaction within eight years after the entry~~  
6 ~~of the judgment, in the following manner: (1) by written instrument, duly acknowledged~~  
7 ~~by such owner or attorney; or (2) by~~ filing an acknowledgment of ~~such~~ satisfaction  
8 ~~signed by the owner or attorney and entered on the docket of the judgment in the~~  
9 ~~county where court in which the judgment was first docketed entered,~~ with the date  
10 ~~affixed and witnessed by the clerk~~ within a reasonable time after payment of the  
11 judgment. If the owner is not the original judgment creditor, the owner or owner's  
12 attorney shall also file proof of ownership. ~~Every~~ ~~If the~~ satisfaction ~~of a~~ ~~is for~~ part of the  
13 judgment, or ~~as to one or more for fewer than all~~ of the judgment debtors, it shall state  
14 the amount paid ~~thereon~~ or ~~for name~~ the debtors who are released ~~of such debtors,~~  
15 naming them.

16 (b) Satisfaction by order of court. ~~When a judgment shall have been fully paid and~~  
17 ~~not satisfied of record, or when the satisfaction of judgment shall have been lost, the~~  
18 The court in which ~~such the~~ judgment was ~~recovered first entered~~ may, upon motion  
19 and satisfactory proof, ~~authorize the attorney of the judgment creditor to satisfy the~~  
20 ~~same, or may~~ enter an order declaring the ~~same judgment~~ satisfied ~~and direct~~  
21 ~~satisfaction to be entered upon the docket.~~

22 (c) ~~Entry by clerk.~~ Upon receipt of a satisfaction of judgment, ~~duly executed and~~  
23 ~~acknowledged, the clerk shall file the same with the papers in the case, and enter it on~~  
24 ~~the register of actions. He shall also enter a brief statement of the substance thereof,~~  
25 ~~including the amount paid, on the margin of the judgment docket, with the date of filing~~  
26 ~~of such satisfaction.~~

27 (d) ~~(c)~~ Effect of satisfaction. ~~When a judgment shall have been satisfied, in whole or~~  
28 ~~in part, or as to any judgment debtor, and such satisfaction entered upon the docket by~~  
29 ~~the clerk, such~~ Satisfaction of a judgment, whether by acknowledgement or order, shall,  
30 ~~to the extent of such satisfaction, be discharged~~ the judgment, and the judgment shall  
31 cease to be a lien as to the debtors named and to the extent of the amount paid. ~~In case~~

32 ~~of partial satisfaction, if any~~ A writ of execution shall thereafter be issued ~~on the~~  
33 ~~judgment, such execution or a writ of garnishment issued after partial satisfaction~~ shall  
34 ~~be endorsed with a memorandum of such~~ include the partial satisfaction and shall direct  
35 the officer to collect only the ~~residue thereof~~ balance of the judgment, or to collect only  
36 from the judgment debtors remaining liable ~~thereon~~.

37 ~~(e)~~ (d) Filing ~~transcript certificate~~ of satisfaction in other counties. ~~When any~~ After  
38 satisfaction of a judgment ~~shall have~~, whether by acknowledgement or order, has been  
39 entered ~~on the judgment docket of the county where such~~ in the court in which the  
40 judgment was first ~~docketed~~ entered, ~~a certified transcript of satisfaction, or~~ a certificate  
41 by the clerk showing ~~such~~ the satisfaction, may be filed with the clerk of the district court  
42 in any other county where the judgment ~~may have~~ has been ~~docketed~~ entered.  
43 ~~Thereupon a similar entry in the judgment docket shall be made by the clerk of such~~  
44 ~~court; and such entry shall have the same effect as in the county where the same was~~  
45 ~~originally entered.~~

46

# Tab 4

1       **Rule 1. General provisions.**

2       (a) Scope of rules. These rules ~~shall~~ govern the procedure in the courts of the state  
3 of Utah in all actions, ~~suits, and proceedings~~ of a civil nature, whether cognizable at law  
4 or in equity, and in all ~~special~~ statutory proceedings, except as governed by other rules  
5 promulgated by this court or enacted by the Legislature and except as stated in Rule 81.  
6 They shall be liberally construed and applied to ~~secure~~ achieve the just, speedy, and  
7 inexpensive determination of every action.

8       (b) Effective date. ~~These rules shall take effect on January 1, 1950; and thereafter all~~  
9 All laws in conflict ~~therewith shall be with these rules are~~ of no ~~further~~ force or effect.  
10 ~~They~~ These rules govern all ~~proceedings in~~ actions brought after they take effect and  
11 ~~also~~ all further proceedings in actions then pending, ~~except to the extent that if,~~ in the  
12 opinion of the court, ~~their application applying a rule in a particular an~~ action pending  
13 when the rules takes effect would not be feasible or would work injustice, ~~in which event~~  
14 the former procedure applies.

15       Advisory Committee Notes

16

1       **Rule 3. Commencement of action.**

2       (a) How commenced. A civil action is commenced ~~(1)~~ by filing a complaint with the  
3 court, ~~or (2) by service of a summons together with a copy of the complaint in~~  
4 ~~accordance with Rule 4. If the action is commenced by the service of a summons and a~~  
5 ~~copy of the complaint, then the complaint, the summons and proof of service, must be~~  
6 ~~filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of~~  
7 ~~this rule, the complaint, summons and proof of service are not filed within ten days of~~  
8 ~~service, the action commenced shall be deemed dismissed and the court shall have no~~  
9 ~~further jurisdiction thereof. The court has jurisdiction from the time the complaint is filed.~~

10       **(b) Payment dishonored.** If a check or other form of payment tendered as a filing fee  
11 is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after  
12 notification by the court. Dishonor of a check or other form of payment does not affect  
13 the validity of the filing, but may be grounds for such sanctions as the court deems  
14 appropriate, which may include dismissal of the action and the award of costs and  
15 attorney fees.

16       ~~**(b) Time of jurisdiction.** The court shall have jurisdiction from the time of filing of the~~  
17 ~~complaint or service of the summons and a copy of the complaint.~~

18       Advisory Committee Notes

19       ~~Rule 3 constitutes a significant change from the prior rule. The rule retains service of~~  
20 ~~the ten-day summons as one of two means to commence an action, but the rule~~  
21 ~~requires that the summons together with a copy of the complaint be served on the~~  
22 ~~defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a~~  
23 ~~copy of the complaint be deposited with the clerk for the defendant whose address is~~  
24 ~~unknown. The changes in Rule 3 must be read and should be interpreted in conjunction~~  
25 ~~with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the~~  
26 ~~running of the defendant's 20-day response time from the service of the summons and~~  
27 ~~complaint.~~

28       ~~Paragraph (a). This paragraph eliminates the requirement that a copy of the~~  
29 ~~complaint be deposited with the clerk for the defendant whose address is unknown.~~  
30 ~~Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the~~  
31 ~~complaint with the clerk for defendants not otherwise served with a copy at the time of~~

32 ~~the service of the summons, has also been eliminated. The rule requires, in effect, that~~  
33 ~~both the summons and the complaint be served pursuant to Rule 4. Under a coordinate~~  
34 ~~change in Rule 12(a), the defendant's time for answering or otherwise responding to the~~  
35 ~~complaint does not begin to run until service of the summons and complaint pursuant to~~  
36 ~~Rule 4.~~

37 ~~Paragraph (b). This paragraph is substantially identical to paragraph (c) of the~~  
38 ~~former rule.~~

1       **Rule 4. Process.**

2       (a) Signing of summons. The summons shall be signed and issued by the plaintiff or  
3 the plaintiff's attorney. Separate summonses may be signed and served.

4       (b)(i) ~~Time of s~~Service. ~~In an action commenced under Rule 3(a)(1), the~~ The  
5 summons ~~together with and~~ a copy of the complaint shall be served no later than 120  
6 days after ~~the filing of~~ the complaint is filed unless the court allows a longer period of  
7 time for good cause ~~shown~~. If the summons and complaint are not timely served, the  
8 action shall be dismissed, without prejudice on application of any party or upon the  
9 court's own initiative.

10       (b)(ii) In any action ~~brought~~ against two or more defendants, ~~on which if~~ service has  
11 been timely ~~obtained~~ made upon one of them,

12       (b)(ii)(A) the plaintiff may proceed against those served, and

13       (b)(ii)(B) the others may be served or appear at any time ~~prior to~~ before trial.

14       (c) Contents of summons.

15       (c)(1) The summons shall contain the name of the court, the address of the court,  
16 the names of the parties to the action, and the county in which it is brought. It shall be  
17 directed to the defendant, state the name, address and telephone number of the  
18 plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It  
19 shall state the time within which the defendant ~~is required to~~ must answer the complaint  
20 in writing, and shall notify the defendant that ~~in case of failure to do so,~~ judgment by  
21 default will be ~~rendered~~ entered against the defendant for failure to answer the  
22 complaint in writing. It shall state either that the complaint is on file with the court or that  
23 ~~the complaint will be filed with the court within ten days of service.~~

24       ~~(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that~~  
25 ~~the defendant need not answer if the complaint is not filed within 10 days after service~~  
26 ~~and shall state the telephone number of the clerk of the court where the defendant may~~  
27 ~~call at least 13 days after service to determine if the complaint has been filed.~~

28       ~~(c)(3)~~ (c)(2) If service is made by publication of the summons without the complaint,  
29 the summons shall briefly state the subject matter ~~and of the action,~~ the ~~sum of money~~  
30 ~~or other~~ relief demanded, and that the complaint is on file with the court.

31 (d) Method of Service. Unless waived ~~in writing under paragraph (f)~~, service of the  
32 summons and complaint shall be by one of the following methods:

33 (d)(1) Personal service. The summons and complaint may be served in any state or  
34 judicial district of the United States by the sheriff or constable or by the deputy of either,  
35 by a United States Marshal or by the marshal's deputy, or by ~~any other~~ person 18 years  
36 of age or older at the time of service and not a party to the action or a party's attorney. ~~If~~  
37 ~~the person to be served refuses to accept a copy of the process, service shall be~~  
38 ~~sufficient if the person serving the same shall state the name of the process and offer to~~  
39 ~~deliver a copy thereof.~~ Personal service shall be made as follows:

40 (d)(1)(A) Upon any individual other than one covered by ~~sub~~paragraphs (B), (C) or  
41 (D) ~~below~~, by delivering a copy of the summons and ~~the~~ complaint to the individual  
42 personally, or by ~~leaving a copy delivering them to a person of suitable age and~~  
43 ~~discretion residing~~ at the individual's dwelling ~~house or usual place of abode with some~~  
44 ~~person of suitable age and discretion there residing~~, or by delivering ~~a copy of the~~  
45 ~~summons and the complaint them~~ to an agent authorized by appointment or by law to  
46 receive service of process;

47 (d)(1)(B) Upon ~~an infant (being a person under 14 years)~~ a minor, by delivering a  
48 copy of the summons and ~~the~~ complaint to the infant minor and ~~also~~ to the infant's  
49 father, mother minor's parent or guardian ~~or, if none can be found within the state, then~~  
50 ~~to any and the~~ person having the care and control of the infant minor, or with whom the  
51 infant minor resides, ~~or in whose service the infant is employed~~;

52 (d)(1)(C) Upon ~~an individual a protected person~~ judicially declared ~~to be of unsound~~  
53 ~~mind or incapable of conducting the person's own affairs~~ incapacitated, by delivering a  
54 copy of the summons and ~~the~~ complaint to the protected person and to the person's  
55 ~~legal representative if one has been appointed and in the absence of such~~  
56 ~~representative, to the individual, if any, who has care, custody or control of the person~~  
57 guardian or conservator;

58 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the  
59 state or any of its political subdivisions, by delivering a copy of the summons and ~~the~~  
60 complaint to the person's guardian or conservator, if one has been appointed, or to the  
61 person who has the care, custody, or control of the individual to be served, or to that

62 person's designee ~~or to the guardian or conservator of the individual to be served if one~~  
63 ~~has been appointed, who shall, in any case, promptly deliver the process to the~~  
64 ~~individual served;~~

65 (d)(1)(E) Upon ~~any~~ corporation not ~~herein~~-otherwise provided for, upon a partnership  
66 or upon an unincorporated association which is subject to suit under a common name,  
67 by delivering a copy of the summons and ~~the~~ complaint to an officer, a managing ~~or~~  
68 ~~agent,~~ general agent, or other agent authorized by appointment or by law to receive  
69 service of process and, ~~if the agent is one authorized by statute to receive service and~~  
70 ~~the statute so requires, by also mailing a copy of the summons and the complaint to the~~  
71 ~~defendant~~ any other person required by statute to be served. If no such officer or agent  
72 can be found within the state, and the defendant has, ~~or advertises or holds itself out as~~  
73 ~~having,~~ an office or place of business ~~within the state or elsewhere, or does business~~  
74 ~~within this state or elsewhere,~~ then upon the person in charge of such office or place of  
75 business;

76 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons  
77 and ~~the~~ complaint to the recorder;

78 (d)(1)(G) Upon a county, by delivering a copy of the summons and ~~the~~ complaint to  
79 the county clerk ~~of such county;~~

80 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the  
81 summons and ~~the~~ complaint to the superintendent or business administrator ~~of the~~  
82 ~~board;~~

83 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons  
84 and ~~the~~ complaint to the president or secretary ~~of its board;~~

85 (d)(1)(J) Upon the state of Utah, ~~in such cases as by law are authorized to be~~  
86 ~~brought against the state,~~ by delivering a copy of the summons and ~~the~~ complaint to the  
87 attorney general and any other person or agency required by statute to be served; and

88 (d)(1)(K) Upon a department or agency of the state of Utah, or upon any public  
89 board, commission or body, ~~subject to suit,~~ by delivering a copy of the summons and  
90 ~~the~~ complaint to any member of its governing board, or to its executive employee or  
91 secretary.

92 (d)(1)(L) If the person to be served refuses to accept the summons and complaint,  
93 the person serving the same shall state the name of the process and offer to deliver it.

94 (d)(2) Service by mail or commercial courier service.

95 (d)(2)(A) The summons and complaint may be served upon an individual other than  
96 one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service  
97 ~~in any state or judicial district of the United States provided if~~ the defendant signs a  
98 document indicating receipt.

99 (d)(2)(B) The summons and complaint may be served upon an entity covered by  
100 paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service ~~in any state~~  
101 ~~or judicial district of the United States provided if the~~ defendant's agent ~~authorized by~~  
102 ~~appointment or by law to receive service of process~~ signs a document indicating receipt.

103 (d)(2)(C) Service by mail or commercial courier service ~~shall be is~~ complete on the  
104 date the receipt is signed ~~as provided by this rule~~.

105 (d)(3) Service in a foreign country. Service of the summons and complaint in a  
106 foreign country shall be made as follows:

107 (d)(3)(A) by any internationally agreed means reasonably calculated to give notice,  
108 such as those means authorized by the Hague Convention on the Service Abroad of  
109 Judicial and Extrajudicial Documents;

110 (d)(3)(B) if there is no internationally agreed means of service or the applicable  
111 international agreement allows other means of service, provided that service is  
112 reasonably calculated to give notice:

113 (d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in  
114 that country in an action in any of its courts of general jurisdiction;

115 (d)(3)(B)(ii) as directed by the foreign authority in response to a ~~letter rogatory or~~  
116 letter of request; or

117 (d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the  
118 individual personally ~~of a copy of the summons and the complaint~~ or by any form of mail  
119 requiring a signed receipt, to be addressed and dispatched by the clerk of the court to  
120 the party to be served; or

121 (d)(3)(C) by other means not prohibited by international agreement as may be  
122 directed by the court.

123 (d)(4) Other service.

124 (d)(4)(A) ~~Where the identity or whereabouts of~~ If the person to be served ~~are~~  
125 ~~unknown and cannot be ascertained~~ cannot be served through reasonable diligence,  
126 ~~where or if~~ service upon all of the ~~individual~~ parties is impracticable under the  
127 circumstances, ~~or where there exists good cause to believe that the person to be served~~  
128 ~~is avoiding service of process~~, the party seeking service ~~of process~~ may file a motion  
129 supported by affidavit requesting an order allowing service by ~~publication or by some~~  
130 other means. The supporting affidavit shall set forth the efforts made to identify, locate  
131 or serve the party ~~to be served~~, or the circumstances which make it impracticable to  
132 serve all of the ~~individual~~ parties.

133 (d)(4)(B) If the motion is granted, the court shall order service ~~of process by~~  
134 ~~publication or~~ by other means, ~~provided that the means of notice employed shall be~~  
135 reasonably calculated, under all the circumstances, to ~~advise~~ notify the ~~interested~~  
136 ~~parties of the pendency party~~ of the action ~~to the extent reasonably possible or~~  
137 ~~practicable~~. The ~~court's~~ order shall ~~also~~ specify the content of the process to be served  
138 and the event ~~or events as of which that constitutes completion of~~ service ~~shall be~~  
139 ~~deemed complete. Unless service is by publication, a copy of the court's order shall be~~  
140 ~~served upon the defendant with the process specified by the court.~~

141 (d)(4)(C) ~~In any proceeding where summons is required to be published, the court~~  
142 ~~shall, upon the request of the party applying for publication, designate the newspaper in~~  
143 ~~which publication shall be made. The newspaper selected shall be a newspaper of~~  
144 ~~general circulation in the county where such publication is required to be made and~~  
145 ~~shall be published in the English language.~~

146 (e) Proof of Service.

147 (e)(1) ~~If service is not waived, the~~ The person effecting service shall file proof with  
148 the court. The proof of service must state the date, place, and manner of service. Proof  
149 of service made pursuant to paragraph (d)(2) shall include a receipt signed by the  
150 defendant or defendant's agent ~~authorized by appointment or by law to receive service~~  
151 ~~of process~~. If service is made by a person other than by an attorney, the sheriff or  
152 constable, or by the deputy of either, by a United States Marshal or by the marshal's  
153 deputy, the proof of service shall be made by affidavit.

154 (e)(2) Proof of service in a foreign country shall be made as ~~prescribed~~ provided in  
155 these rules ~~for service within this state~~, or by the law of the foreign country, or by order  
156 of the court. ~~When service is made pursuant to paragraph (d)(3)(C), proof~~ Proof of  
157 service under paragraph (d)(3)(B)(iii) shall include a receipt signed by the addressee or  
158 other evidence of delivery to the addressee satisfactory to the court.

159 (e)(3) Failure to make proof of service does not affect the validity of the service. The  
160 court may allow proof of service to be amended.

161 (f) Waiver of Service; Payment of Costs for Refusing to Waive.

162 (f)(1) A plaintiff may request a ~~defendant subject to service under paragraph (d)~~  
163 person other than a minor or a protected person to waive service of ~~a the~~ summons and  
164 complaint. The request to waive service and the summons and complaint shall be  
165 mailed, e-mailed or delivered to the person upon whom service is authorized under  
166 paragraph (d). ~~It shall include a copy of the complaint, The request~~ shall allow the  
167 defendant at least 20-21 days from the date on which the request is sent to return the  
168 waiver, or 30-28 days if addressed to a defendant person outside of the United States,  
169 and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of  
170 Service of Summons set forth in the Appendix of Forms attached to these rules.

171 (f)(2) A defendant who timely returns a waiver ~~is not required to~~ must respond to the  
172 complaint ~~until 45~~ within 42 days after the date on which the request for waiver of  
173 service was mailed, e-mailed or delivered ~~to the defendant~~, or 60-56 days after that date  
174 if addressed to a defendant person outside of the United States.

175 (f)(3) A defendant who waives service of ~~a the~~ summons and complaint does not  
176 thereby make any other waiver ~~any objection to venue or to the jurisdiction of the court~~  
177 over the defendant.

178 (f)(4) If a defendant person refuses a request for waiver of service ~~submitted in~~  
179 accordance with ~~made according~~ this rule, the court shall impose upon the defendant  
180 the costs subsequently incurred in effecting service.

181 Advisory Committee Notes

182

1 **Rule 8. General rules of pleadings.**

2 (a) Claims for relief. ~~A pleading which sets forth a claim for relief, whether an An~~  
3 original claim, counterclaim, cross-claim or third-party claim, shall contain in reasonable  
4 detail ~~(1)-a~~ simple, short and plain;

5 (a)(1) statement of the claim facts, including the important times, places, participants  
6 and events, showing that the pleader party is entitled to relief;

7 (a)(2) statement of the legal theory on which the claim rests; and

8 ~~(2)-a~~ (a)(3) demand for judgment for the specified relief ~~to which he deems himself~~  
9 entitled. Relief in the alternative or of several different types may be demanded.

10 (b) Defenses; form of denials. A party shall state in simple, short and plain terms his  
11 any defenses to each claim asserted and shall admit or deny the ~~averments upon which~~  
12 ~~the adverse party relies~~ statements in the claim. ~~If he is A party~~ without knowledge or  
13 information sufficient to form a belief ~~as to~~ about the truth of ~~an averment, he a~~  
14 statement shall so state, and this has the effect of a denial. Denials shall fairly meet the  
15 substance of the ~~averments~~ statements denied. ~~When a pleader intends in good faith to~~  
16 ~~deny only a part or a qualification of an averment, he shall specify so much of it as is~~  
17 ~~true and material and shall deny only the remainder. Unless the pleader intends in good~~  
18 ~~faith to controvert all the averments of the preceding pleading, he may make his denials~~  
19 ~~as specific denials of designated averments or paragraphs, or he may generally deny all~~  
20 ~~the averments except such designated averments or paragraphs as he expressly~~  
21 ~~admits; but, when he does so intend to controvert all its averments, he may do so by~~  
22 ~~general denial subject to the obligations set forth in Rule 11.~~ A party may deny all of the  
23 statements in a claim by general denial. A party may specify the statement or part of a  
24 statement that is admitted and deny the rest. A party may specify the statement or part  
25 of a statement that is denied and admit the rest.

26 (c) Affirmative defenses. An affirmative defense shall contain in reasonable detail a  
27 simple, short and plain;

28 (c)(1) statement of the facts, including the important times, places, participants, and  
29 events, showing that the party avoids liability;

30 (c)(2) statement of the legal theory on which the defense rests; and

31 (c)(3) a demand for judgment for specified relief.

32 ~~In pleading to a preceding pleading, a~~ A party shall set forth affirmatively in a  
33 responsive pleading accord and satisfaction, arbitration and award, assumption of risk,  
34 contributory negligence, discharge in bankruptcy, duress, estoppel, failure of  
35 consideration, fraud, illegality, injury by fellow servant, laches, license, payment,  
36 release, res judicata, statute of frauds, statute of limitations, waiver, and any other  
37 matter constituting an avoidance or affirmative defense. ~~When if~~ a party ~~has~~ mistakenly  
38 ~~designated designates~~ a defense as a counterclaim or a counterclaim as a defense, the  
39 court, on terms, ~~if justice so requires, shall may~~ treat the pleadings as if ~~there the~~  
40 defense or counterclaim had been ~~a properly designation designated~~.

41 (d) Effect of failure to deny. ~~Averments Statements~~ in a pleading to which a  
42 responsive pleading is required, other than ~~those as to statements of~~ the amount of  
43 damage, are admitted ~~when if~~ not denied in the responsive pleading. ~~Averments~~  
44 Statements in a pleading to which no responsive pleading is required or permitted ~~shall~~  
45 ~~be taken as are deemed~~ denied or avoided.

46 (e) ~~Pleading to be concise and direct; c~~Consistency.

47 ~~(e)(1) Each averment of a pleading shall be simple, concise, and direct. No technical~~  
48 ~~forms of pleading or motions are required.~~

49 ~~(e)(2)~~ A party may ~~set forth two or more statements of state~~ a claim or defense  
50 alternately or hypothetically, either in one count or defense or in separate counts or  
51 defenses. ~~When two or more if~~ statements are made in the alternative and one of them  
52 ~~if made independently would be is~~ sufficient, the pleading is not made insufficient by the  
53 insufficiency of ~~one or more of the an~~ alternative statements. A party may ~~also state as~~  
54 ~~many separate legal and equitable~~ claims or legal and equitable defenses ~~as he has~~  
55 regardless of consistency ~~and whether based on legal or on equitable grounds or on~~  
56 ~~both. All statements shall be made subject to the obligations set forth in Rule 11.~~

57 (f) Construction of pleadings. All pleadings shall be ~~so~~ construed ~~as~~ to do substantial  
58 justice.

59 Advisory Committee Notes

60 By requiring a party to plead the “facts” (rather than the former “claims”) showing  
61 that the party is entitled to relief, the committee does not intend to put in place the old  
62 technical pleading requirements of fact pleading. Rather, the committee intends that the

63 pleadings, both claims and defenses, should provide more and earlier notice of the facts  
64 alleged by a party with less reliance on discovery.

65

**Rule 16. Pretrial conferences, ~~scheduling, and management conferences.~~**

(a) Pretrial conferences. ~~In any action, the~~ The court, in its discretion or upon motion ~~of a party,~~ may direct the attorneys ~~for and~~ the parties ~~and any unrepresented parties~~ to appear ~~before it for a conference or conferences before trial~~ for such purposes as:

(a)(1) expediting the disposition of the action;

(a)(2) establishing early and continuing control so that the case will not be protracted for lack of management;

(a)(3) discouraging wasteful pretrial activities;

(a)(4) improving the quality of the trial through more thorough preparation;

(a)(5) facilitating the settlement of the case; ~~and~~

(a)(6) considering all matters as may aid in the disposition of the case.;

~~(b) Scheduling and management conference and orders. In any action, in addition to any other pretrial conferences that may be scheduled, the court, upon its own motion or upon the motion of a party, may conduct a scheduling and management conference. The attorneys and unrepresented parties shall appear at the scheduling and management conference in person or by remote electronic means. Regardless whether a scheduling and management conference is held, on motion of a party the court shall enter a scheduling order that governs the time:~~

~~(b)(1)-(a)(7) establishing the time~~ to join other parties and to amend the pleadings;

~~(b)(2)-(a)(8) establishing the time~~ to file motions; ~~and~~

~~(b)(3)-(a)(9) establishing the time~~ to complete discovery.;

~~The scheduling order may also include:~~

~~(b)(4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted~~ (a)(10) extending fact discovery;

~~(b)(5)-(a)(11) the date or dates for conferences before trial, a pretrial and final pretrial conferences;~~ and trial; ~~and~~

~~(b)(6)-(a)(12) provisions for preservation, disclosure or discovery of electronically stored information;~~

~~(b)(7)-(a)(13) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;~~ and

31 ~~(b)(8)-(a)(14)~~ any other appropriate matters ~~appropriate in the circumstances of the~~  
32 ~~case.~~

33 (b) Unless ~~the an~~ order sets the trial date ~~of trial~~, any party may and the plaintiff  
34 shall, at the close of all discovery, certify to the court that the case is ready for trial. The  
35 court shall schedule the trial as soon as mutually convenient to the court and parties.  
36 The court shall notify parties of the trial date ~~of trial~~ and of any final pretrial conference.

37 (c) Final pretrial ~~or settlement~~ conferences. ~~In any action where a final pretrial~~  
38 ~~conference has been ordered, it~~ The court, in its discretion or upon motion, may direct  
39 the attorneys and the parties to appear for such purposes as settlement and trial  
40 management. The conference shall be held as close to the time of trial as reasonable  
41 under the circumstances. ~~The conference shall be attended by at least one of the~~  
42 ~~attorneys who will conduct the trial for each of the parties, and the attorneys attending~~  
43 ~~the pretrial, unless waived by the court, shall have available, either in person or by~~  
44 ~~telephone, the appropriate parties who have authority to make binding decisions~~  
45 ~~regarding settlement.~~

46 (d) Sanctions. If a party or a party's attorney fails to obey ~~a scheduling or pretrial an~~  
47 ~~order, if no appearance is made on behalf of a party at a scheduling or pretrial or a~~  
48 party's attorney fails to attend a conference, if a party or a party's attorney is  
49 substantially unprepared to participate in ~~the a~~ conference, or if a party or a party's  
50 attorney fails to participate in good faith, the court, upon motion or its own initiative, may  
51 take any action authorized by Rule 37(b)(2).

52 Advisory Committee Notes

53

1 **Rule 26. General provisions governing disclosure and discovery.**

2 (a) ~~Required disclosures; Discovery methods. This rule applies unless changed or~~  
3 ~~supplemented by a rule governing disclosure and discovery in a practice area.~~

4 (a)(1) Initial disclosures. Except in cases exempt under ~~subdivision paragraph~~ (a)(2)  
5 ~~and except as otherwise stipulated or directed by order~~, a party shall, without awaiting  
6 ~~for~~ a discovery request, provide to other parties:

7 (a)(1)(A) the name and, if known, the address and telephone number of:

8 ~~(a)(1)(A)(i) each individual likely to have discoverable information supporting its~~  
9 ~~claims or defenses, unless solely for impeachment, identifying the subjects of the~~  
10 ~~information; and~~

11 ~~(a)(1)(A)(ii) each fact witness the party may call in its case in chief and a summary of~~  
12 ~~the expected testimony;~~

13 (a)(1)(B) a copy of, ~~or a description by category and location of~~, all discoverable  
14 documents, data compilations, electronically stored information, and tangible things in  
15 the possession, ~~custody~~, or control of the party ~~supporting its claims or defenses, unless~~  
16 ~~solely for impeachment that the party may offer in its case in chief;~~

17 (a)(1)(C) a computation of any ~~category of~~ damages claimed ~~by the disclosing party,~~  
18 ~~making available for inspection and copying as under Rule 34 and a copy of~~ all  
19 discoverable documents or ~~other~~ evidentiary material on which such computation is  
20 based, including materials ~~bearing on~~ about the nature and extent of injuries suffered;  
21 ~~and~~

22 (a)(1)(D) ~~for inspection and copying as under Rule 34 a copy of~~ any insurance  
23 agreement under which any person ~~carrying on an insurance business~~ may be liable to  
24 satisfy part or all of a judgment ~~which may be entered in the case~~ or to indemnify or  
25 reimburse for payments made to satisfy the judgment;

26 ~~(a)(1)(E) a copy of all documents to which a party refers in its pleadings; and~~

27 ~~(a)(1)(F) any statement or admission concerning the action or its subject matter~~  
28 ~~previously made by the party to whom disclosure is made.~~

29 ~~Unless otherwise stipulated by the parties or ordered by the court, the (a)(1)(G) The~~  
30 disclosures required by ~~subdivision paragraph~~ (a)(1) shall be made;

31 (a)(1)(G)(i) by the plaintiff within 14 days after service of the meeting of the parties  
32 under subdivision (f) first answer to the complaint; and

33 (a)(1)(G)(ii) by the defendant within 28 days after the plaintiff's first disclosure or  
34 after that defendant's appearance, whichever is later.

35 ~~Unless otherwise stipulated by the parties or ordered by the court, a party joined~~  
36 ~~after the meeting of the parties shall make these disclosures within 30 days after being~~  
37 ~~served. A party shall make initial disclosures based on the information then reasonably~~  
38 ~~available and is not excused from making disclosures because the party has not fully~~  
39 ~~completed the investigation of the case or because the party challenges the sufficiency~~  
40 ~~of another party's disclosures or because another party has not made disclosures.~~

41 (a)(2) Exemptions.

42 (a)(2)(A) The requirements of subdivision paragraph (a)(1) ~~and subdivision (f)~~ do not  
43 apply to actions:

44 ~~(a)(2)(A)(i) based on contract in which the amount demanded in the pleadings is~~  
45 ~~\$20,000 or less;~~

46 ~~(a)(2)(A)(ii)~~ (a)(2)(A)(i) for judicial review of adjudicative proceedings or rule making  
47 proceedings of an administrative agency;

48 ~~(a)(2)(A)(iii)~~ (a)(2)(A)(ii) governed by Rule 65B or Rule 65C;

49 ~~(a)(2)(A)(iv)~~ (a)(2)(A)(iii) to enforce an arbitration award;

50 ~~(a)(2)(A)(v)~~ (a)(2)(A)(iv) for water rights general adjudication under Title 73, Chapter  
51 4; ~~and~~

52 ~~(a)(2)(A)(vi) in which any party not admitted to practice law in Utah is not~~  
53 ~~represented by counsel.~~

54 (a)(2)(B) In an exempt action, the matters subject to disclosure under subpart (a)(1)  
55 are subject to discovery ~~under subpart (b)~~.

56 (a)(3) Disclosure of expert testimony.

57 (a)(3)(A) A party shall disclose without waiting for a discovery request, provide to  
58 other parties the identity of any person who may be used at trial to present evidence  
59 under Rules 702, 703, or 705 of the Utah Rules of Evidence. and a copy of

60 ~~(a)(3)(B) Unless otherwise stipulated by the parties or ordered by the court, this~~  
61 ~~disclosure shall, with respect to a witness who is retained or specially employed to~~

62 ~~provide expert testimony in the case or whose duties as an employee of the party~~  
63 ~~regularly involve giving expert testimony, be accompanied by~~ a written report prepared  
64 and signed by the witness or party. An expert witness may not testify in a party's case-  
65 in-chief concerning any matter not contained in the report. The report shall contain the  
66 subject matter on which the expert is expected to testify; the substance of the facts and  
67 opinions to which the expert is expected to testify; a summary of the grounds for each  
68 opinion; the qualifications of the witness, including a list of all publications authored by  
69 the witness within the preceding ten years; the compensation to be paid for the study  
70 and testimony; and a listing of any other cases in which the witness has testified as an  
71 expert at trial or by deposition within the preceding four years.

72 ~~(a)(3)(C) Unless otherwise stipulated by the parties or ordered by the court, the~~  
73 ~~disclosures (a)(3)(B) Disclosure~~ required by ~~subdivision paragraph~~ (a)(3) shall be made  
74 within ~~30-28~~ days after the expiration of fact discovery as provided by ~~subdivision~~  
75 ~~paragraph~~ (d) or, if the evidence is intended solely to contradict ~~or rebut~~ evidence ~~on the~~  
76 ~~same subject matter identified by another party~~ under paragraph ~~(3)(B) (a)(3)(A)~~, within  
77 ~~60-56~~ days after ~~the~~ disclosure ~~made~~ by the other party.

78 (a)(4) Pretrial disclosures. A party shall, without waiting for a discovery request,  
79 provide to other parties ~~the following information regarding the evidence that it may~~  
80 ~~present at trial other than solely for impeachment:~~

81 (a)(4)(A) the name and, if not previously provided, the address and telephone  
82 number of each witness, unless solely for impeachment, separately identifying  
83 witnesses the party ~~expects to present will call~~ and witnesses the party may call ~~if the~~  
84 ~~need arises;~~

85 (a)(4)(B) ~~the designation the name~~ of witnesses whose testimony is expected to be  
86 presented by ~~means transcript~~ of a deposition and, ~~if not taken stenographically,~~ a copy  
87 of the transcript ~~of the pertinent portions of the deposition testimony;~~ and

88 (a)(4)(C) ~~an appropriate~~ identification of each ~~document or other~~ exhibit, including  
89 summaries of other evidence, unless solely for impeachment, separately identifying  
90 those which the party ~~expects to will~~ offer and those which the party may offer ~~if the~~  
91 ~~need arises.~~

92 ~~Unless otherwise stipulated by the parties or ordered by the court, the disclosures~~  
93 ~~(A)(4)(D) Disclosure~~ required by ~~subdivision paragraph~~ (a)(4) shall be made at least 30  
94 ~~28~~ days before trial. ~~Within 14 days thereafter, unless a different time is specified by the~~  
95 ~~court, At least 14 days before trial,~~ a party ~~may shall~~ serve and file ~~a list disclosing (i)~~  
96 ~~any objections and grounds for the objections~~ to the use ~~under Rule 32(a)~~ of a  
97 deposition ~~designated by another party under subparagraph (B) and (ii) any objection,~~  
98 ~~together with the grounds therefor, that may be made~~ to the admissibility of ~~materials~~  
99 ~~identified under subparagraph (C) exhibits. Objections not so disclosed, other Other~~  
100 than objections under Rules 402 and 403 of the Utah Rules of Evidence, ~~shall be~~  
101 ~~deemed objections not listed are~~ waived unless excused by the court for good cause  
102 ~~shown.~~

103 ~~(a)(5) Form of disclosures. Unless otherwise stipulated by the parties or ordered by~~  
104 ~~the court, all disclosures under paragraphs (1), (3) and (4) shall be made in writing,~~  
105 ~~signed and served.~~

106 ~~(a)(6) Methods to discover additional matter. Parties may obtain discovery by one or~~  
107 ~~more of the following methods: depositions upon oral examination or written questions;~~  
108 ~~written interrogatories; production of documents or things or permission to enter upon~~  
109 ~~land or other property, for inspection and other purposes; physical and mental~~  
110 ~~examinations; and requests for admission.~~

111 ~~(b) Discovery scope and limits. Unless otherwise limited by order of the court in~~  
112 ~~accordance with these rules, the scope of discovery is as follows:~~

113 ~~(b)(1) In general. Parties may obtain discovery regarding discover~~ any matter, not  
114 privileged, which is relevant to ~~the subject matter involved in the pending action,~~  
115 ~~whether it relates to~~ the claim or defense of ~~the any~~ party ~~seeking discovery or to the~~  
116 ~~claim or defense of any other party,~~ including the existence, description, nature,  
117 custody, condition, and location of any books, documents, or other tangible things and  
118 the identity and location of persons having knowledge of any discoverable matter. It is  
119 not grounds for objection that the information sought will be inadmissible at the trial if  
120 the information sought ~~appears reasonably calculated to lead to the discovery of~~  
121 ~~admissible evidence~~ is relevant to the claim or defense of a party. ~~For good cause, the~~  
122 ~~court may order discovery of any matter relevant to the subject matter of the action. A~~

123 party is not entitled to discover information merely because it appears calculated to lead  
124 to the discovery of admissible evidence.

125 (b)(2) A party need not provide discovery of electronically stored information from  
126 sources that the party identifies as not reasonably accessible because of undue burden  
127 or cost. The party shall expressly make any claim that the source is not reasonably  
128 accessible, describing the source, the nature and extent of the burden, the nature of the  
129 information not provided, and any other information that will enable other parties to  
130 ~~assess evaluate~~ the claim. On motion to compel discovery or for a protective order, the  
131 party from whom discovery is sought must show that the information is not reasonably  
132 accessible because of undue burden or cost. If that showing is made, the court may  
133 order discovery from such sources if the requesting party shows good cause,  
134 ~~considering the limitations of subsection (b)(3)~~. The court may specify conditions for the  
135 discovery.

136 ~~(b)(3) Limitations. The frequency or extent of use of the discovery methods set forth~~  
137 ~~in Subdivision (a)(6) shall be limited by the court if it determines that:~~

138 ~~(b)(3)(A) the discovery sought is unreasonably cumulative or duplicative, or is~~  
139 ~~obtainable from some other source that is more convenient, less burdensome, or less~~  
140 ~~expensive;~~

141 ~~(b)(3)(B) the party seeking discovery has had ample opportunity by discovery in the~~  
142 ~~action to obtain the information sought; or~~

143 ~~(b)(3)(C) the discovery is unduly burdensome or expensive, taking into account the~~  
144 ~~needs of the case, the amount in controversy, limitations on the parties' resources, and~~  
145 ~~the importance of the issues at stake in the litigation. The court may act upon its own~~  
146 ~~initiative after reasonable notice or pursuant to a motion under Subdivision (c).~~

147 ~~(b)(4) (b)(3) Trial preparation: Mmaterials. Subject to the provisions of Subdivision~~  
148 ~~(b)(5) of this rule, a A party may obtain discovery of discover discoverable documents~~  
149 ~~and tangible things otherwise discoverable under Subdivision (b)(1) of this rule and~~  
150 ~~prepared in anticipation of litigation or for trial by or for another party or by or for that~~  
151 ~~other party's representative (including the party's attorney, consultant, surety,~~  
152 ~~indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has~~  
153 ~~substantial need of the materials in the preparation of to prepare the case and that the~~

154 party is unable without undue hardship to obtain ~~the~~ substantially equivalent ~~of the~~  
155 materials by other means. In ordering discovery of such materials ~~when the required~~  
156 ~~showing has been made~~, the court shall protect against disclosure of the mental  
157 impressions, conclusions, opinions, or legal theories of an attorney or other  
158 representative of a party ~~concerning the litigation~~.

159 ~~A party may obtain without the required showing a statement concerning the action~~  
160 ~~or its subject matter previously made by that party. (b)(4) Statement previously made~~  
161 ~~about the action.~~ Upon request, a person not a party may obtain ~~without the required~~  
162 ~~showing~~ a statement concerning about the action or its subject matter previously made  
163 by that person. If the request is refused, the person may move for a court order. ~~The~~  
164 ~~provisions of under~~ Rule 37(a)(4) ~~apply to the award of expenses incurred in relation to~~  
165 ~~the motion. For purposes of this paragraph, a~~ A statement previously made is (A) a  
166 written statement signed or ~~otherwise adopted or~~ approved by the person making it, or  
167 (B) a ~~stenographic, mechanical, electrical, or other recording, or a transcription thereof,~~  
168 ~~which is a substantially verbatim recital of an contemporaneously recorded~~ oral  
169 statement by the person making it ~~and contemporaneously recorded or a transcript~~  
170 thereof.

171 ~~(b)(5) Trial preparation: Experts.~~

172 ~~(b)(5)(A) A party may depose any person who has been identified as an expert~~  
173 ~~whose opinions may be presented at trial. If a report is required under subdivision~~  
174 ~~(a)(3)(B), any deposition shall be conducted within 60 days after the report is provided.~~

175 ~~(b)(5)(B) A party may discover facts known or opinions held by an expert who has~~  
176 ~~been retained or specially employed by another party in anticipation of litigation or~~  
177 ~~preparation for trial and who is not expected to be called as a witness at trial, only as~~  
178 ~~provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is~~  
179 ~~impracticable for the party seeking discovery to obtain facts or opinions on the same~~  
180 ~~subject by other means.~~

181 ~~(b)(5)(C) Unless manifest injustice would result,~~

182 ~~(b)(5)(C)(i) The court shall require that the party seeking discovery pay the expert a~~  
183 ~~reasonable fee for time spent in responding to discovery under Subdivision (b)(5) of this~~  
184 ~~rule; and~~

185 ~~(b)(5)(C)(ii) With respect to discovery obtained under Subdivision (b)(5)(A) of this~~  
186 ~~rule the court may require, and with respect to discovery obtained under Subdivision~~  
187 ~~(b)(5)(B) of this rule the court shall require, the party seeking discovery to pay the other~~  
188 ~~party a fair portion of the fees and expenses reasonably incurred by the latter party in~~  
189 ~~obtaining facts and opinions from the expert.~~

190 ~~(b)(6)-(b)(5)~~ Claims of Privilege or Protection of Trial Preparation Materials.

191 ~~(b)(6)(A)-(b)(5)(A)~~ Information withheld. ~~When-If~~ a party withholds discoverable  
192 information ~~otherwise discoverable under these rules~~ by claiming that it is privileged or  
193 subject to protection as trial preparation material prepared in anticipation of litigation or  
194 for trial, the party shall make the claim expressly and shall describe the nature of the  
195 documents, communications, or things not produced ~~or disclosed~~ in a manner that,  
196 without revealing the information itself ~~privileged or protected~~, will enable other parties  
197 to assess the applicability of the privilege or protection evaluate the claim.

198 ~~(b)(6)(B)-(b)(5)(B)~~ Information produced. If a party produces information ~~is produced~~  
199 ~~in discovery that is subject to a~~ the party ~~claims~~ of is ~~privileged~~ or ~~of protection as trial~~  
200 ~~preparation material prepared in anticipation of litigation or for trial~~, the producing party  
201 ~~making the claim~~ may notify any receiving party ~~that received the information~~ of the  
202 claim and the basis for it. After being notified, a receiving party must promptly return,  
203 sequester, or destroy the specified information and any copies it has and may not use  
204 or disclose the information until the claim is resolved. A receiving party may promptly  
205 present the information to the court under seal for a determination of the claim. If the  
206 receiving party disclosed the information before being notified, it must take reasonable  
207 steps to retrieve it. The producing party must preserve the information until the claim is  
208 resolved.

209 (c) Proportionality; Pprotective orders.

210 (c)(1) Discovery must be proportional to the case. The court and parties may  
211 allocate the costs, expenses and attorney fees of discovery to achieve proportionality.  
212 The court and parties shall try to achieve proportionality considering:

213 (c)(1)(A) the amount in controversy;

214 (c)(1)(B) the complexity of the case;

215 (c)(1)(C) the importance of the issues;

216 (c)(1)(D) the importance of the information;  
217 (c)(1)(E) the relevance of the information;  
218 (c)(1)(F) the parties' relative access to the information;  
219 (c)(1)(G) the discovery already had in the case;  
220 (c)(1)(H) the expense of the discovery;  
221 (c)(1)(I) the burden on the party requesting discovery;  
222 (c)(1)(J) the burden on the party providing discovery;  
223 (c)(1)(K) the needs of the case;  
224 (c)(1)(L) whether the discovery limits allow a fair opportunity for the discovery of  
225 discoverable information;  
226 (c)(1)(M) whether the discovery is available from another source that is more  
227 convenient, less burdensome, or less expensive;  
228 (c)(1)(N) whether the discovery is cumulative of disclosures or other discovery;  
229 (c)(1)(O) whether the party seeking discovery has had ample opportunity to discover  
230 the information sought; and  
231 (c)(1)(P) any other factor identified by the court.  
232 ~~Upon motion by a (c)(2) A party or by the person from whom discovery is sought,~~  
233 ~~accompanied by~~ may move for an order of protection from discovery. The movant shall  
234 attach to the motion a copy of the request for discovery or the response which is at  
235 issue and a certification that the movant has in good faith conferred or attempted to  
236 confer with other affected parties ~~in an effort~~ to resolve the dispute without court action,  
237 ~~and for good cause shown, the~~ The court ~~in which the action is pending or alternatively,~~  
238 ~~on matters relating to a deposition, the court in the district where the deposition is to be~~  
239 ~~taken~~ may make any order ~~which justice requires~~ to protect a party or person from  
240 discovery being conducted in bad faith or from annoyance, embarrassment, oppression,  
241 or undue burden or expense, or to achieve proportionality, including one or more of the  
242 following:  
243 ~~(e)(1)-(c)(2)(A)~~ (c)(2)(A) that the discovery not be had;  
244 ~~(e)(2)-(c)(2)(B)~~ (c)(2)(B) that the discovery may be had only on specified terms and  
245 conditions, including a designation of the time or place;

246 (c)(2)(C) that a question about a statement or opinion of fact or the application of law  
247 to fact not be answered until after designated discovery has been completed or until a  
248 pretrial conference or other later time;

249 ~~(c)(3)-(c)(2)(D)~~ that the discovery may be had only by a method of discovery other  
250 than that selected by the party seeking discovery;

251 ~~(c)(4)-(c)(2)(E)~~ that certain matters not be inquired into, or that the scope of the  
252 discovery be limited to certain matters;

253 ~~(c)(5)-(c)(2)(F)~~ that discovery be conducted with no one present except persons  
254 designated by the court;

255 ~~(c)(6)-(c)(2)(G)~~ that a deposition after being sealed be opened only by order of the  
256 court;

257 ~~(c)(7)-(c)(2)(H)~~ that a trade secret or other confidential research, development, or  
258 commercial information not be disclosed or be disclosed only in a designated way;

259 (c)(2)(I) that the costs, expenses and attorney fees of discovery be allocated among  
260 the parties as ordered by the court; and

261 ~~(c)(8)-(c)(2)(J)~~ that the parties simultaneously file specified documents or information  
262 enclosed in sealed envelopes to be opened as directed by the court.

263 (c)(3) If the order terminates a deposition, it shall be resumed only upon the order of  
264 the court in which the action is pending.

265 (c)(4) If the motion for a protective order is denied in whole or in part, the court may,  
266 on such terms and conditions as are just, order that any party or person provide or  
267 permit discovery. ~~The provisions of~~ Rule 37(a)(4) ~~apply~~ies to the award of expenses  
268 incurred in relation to the motion.

269 (d) Sequence and timing of discovery.

270 (d)(1) Discovery shall be in two stages. Initial fact discovery shall be completed  
271 within 150 days after the defendant's first disclosure is made and the parties shall follow  
272 the limits established in Rules 30, 33, 34 and 36. Methods of discovery may be used in  
273 any sequence and the fact that a party is conducting discovery shall not delay any other  
274 party's discovery. Except for cases exempt under ~~subdivision paragraph~~ (a)(2), ~~except~~  
275 ~~as authorized under these rules, or unless otherwise stipulated by the parties or ordered~~  
276 ~~by the court,~~ a party may not seek discovery from any source before ~~the parties have~~

277 ~~met and conferred as required by subdivision (f). Unless otherwise stipulated by the~~  
278 ~~parties or ordered by the court, fact discovery shall be completed within 240 days after~~  
279 ~~the first answer is filed. Unless the court upon motion, for the convenience of parties~~  
280 ~~and witnesses and in the interests of justice, orders otherwise, methods of discovery~~  
281 ~~may be used in any sequence and the fact that a party is conducting discovery, whether~~  
282 ~~by deposition or otherwise, shall not operate to delay any other party's discovery that~~  
283 ~~party's initial disclosure obligations are satisfied.~~

284 (d)(2) To obtain discovery beyond the limits established by these rules, a party shall  
285 file:

286 (d)(2)(A) before the close of the initial fact discovery, a stipulated notice of extended  
287 discovery and a statement signed by the parties and lawyers that the additional  
288 discovery is necessary and proportionate and that each party has reviewed and  
289 approved a discovery budget; or

290 (d)(2)(B) before the close of the initial fact discovery and after reaching the limits of  
291 initial discovery imposed by these rules, a motion for extended discovery and a  
292 statement signed by the party and lawyer that the additional discovery is necessary and  
293 proportionate and that the party has reviewed and approved a discovery budget.

294 ~~(e) Supplementation of responses. Standard for disclosure or response; disclosure~~  
295 ~~or response by an organization; failure to disclose; initial and supplemental disclosures~~  
296 ~~and responses. A party who has made a disclosure under subdivision (a) or responded~~  
297 ~~to a request for discovery with a response is under a duty to supplement the disclosure~~  
298 ~~or response to include information thereafter acquired if ordered by the court or in the~~  
299 ~~following circumstances:~~

300 ~~(e)(1) A party is under a duty to supplement at appropriate intervals disclosures~~  
301 ~~under subdivision (a) if the~~

302 (e)(1) A party shall make disclosures and responses to discovery based on the  
303 information then known or reasonably available to the party.

304 (e)(2) If the party providing disclosure or responding to discovery is a corporation,  
305 partnership, association, or governmental agency, the party shall act through one or  
306 more officers, directors, managing agents, or other persons.

307 (e)(3) A party is not excused from making disclosures or responses because the  
308 party has not completed investigating the case or because the party challenges the  
309 sufficiency of another party's disclosures or responses or because another party has not  
310 made disclosures or responses.

311 (e)(4) If a party fails to disclose or to timely supplement a disclosure or response to  
312 discovery, that party may not use the undisclosed witness, document or material at any  
313 hearing or trial unless the failure is harmless or the party shows good cause for the  
314 failure.

315 (e)(5) If a party learns that in some material respect the information disclosed a  
316 disclosure or response is incomplete or incorrect and if in some important way, the party  
317 must timely provide the additional or corrective information if it has not otherwise been  
318 made known to the other parties during the discovery process or in writing. With respect  
319 to testimony of an expert from whom a report is required under subdivision (a)(3)(B) the  
320 duty extends both to information contained in the report and to information provided  
321 through a deposition of the expert. The supplemental disclosure or response must state  
322 why the additional or correct information was not previously provided.

323 ~~(e)(2) A party is under a duty seasonably to amend a prior response to an~~  
324 ~~interrogatory, request for production, or request for admission if the party learns that the~~  
325 ~~response is in some material respect incomplete or incorrect and if the additional or~~  
326 ~~corrective information has not otherwise been made known to the other parties during~~  
327 ~~the discovery process or in writing.~~

328 ~~(f) Discovery and scheduling conference.~~

329 ~~The following applies to all cases not exempt under subdivision (a)(2), except as~~  
330 ~~otherwise stipulated or directed by order.~~

331 ~~(f)(1) The parties shall, as soon as practicable after commencement of the action,~~  
332 ~~meet in person or by telephone to discuss the nature and basis of their claims and~~  
333 ~~defenses, to discuss the possibilities for settlement of the action, to make or arrange for~~  
334 ~~the disclosures required by subdivision (a)(1), to discuss any issues relating to~~  
335 ~~preserving discoverable information and to develop a stipulated discovery plan.~~  
336 ~~Plaintiff's counsel shall schedule the meeting. The attorneys of record shall be present~~  
337 ~~at the meeting and shall attempt in good faith to agree upon the discovery plan.~~

338 ~~(f)(2) The plan shall include:~~

339 ~~(f)(2)(A) what changes should be made in the timing, form, or requirement for~~  
340 ~~disclosures under subdivision (a), including a statement as to when disclosures under~~  
341 ~~subdivision (a)(1) were made or will be made;~~

342 ~~(f)(2)(B) the subjects on which discovery may be needed, when discovery should be~~  
343 ~~completed, whether discovery should be conducted in phases and whether discovery~~  
344 ~~should be limited to particular issues;~~

345 ~~(f)(2)(C) any issues relating to preservation, disclosure or discovery of electronically~~  
346 ~~stored information, including the form or forms in which it should be produced;~~

347 ~~(f)(2)(D) any issues relating to claims of privilege or of protection as trial preparation~~  
348 ~~material, including if the parties agree on a procedure to assert such claims after~~  
349 ~~production whether to ask the court to include their agreement in an order;~~

350 ~~(f)(2)(E) what changes should be made in the limitations on discovery imposed~~  
351 ~~under these rules, and what other limitations should be imposed;~~

352 ~~(f)(2)(F) the deadline for filing the description of the factual and legal basis for~~  
353 ~~allocating fault to a non party and the identity of the non party; and~~

354 ~~(f)(2)(G) any other orders that should be entered by the court.~~

355 ~~(f)(3) Plaintiff's counsel shall submit to the court within 14 days after the meeting and~~  
356 ~~in any event no more than 60 days after the first answer is filed a proposed form of~~  
357 ~~order in conformity with the parties' stipulated discovery plan. The proposed form of~~  
358 ~~order shall also include each of the subjects listed in Rule 16(b)(1)-(8), except that the~~  
359 ~~date or dates for pretrial conferences, final pretrial conference and trial shall be~~  
360 ~~scheduled with the court or may be deferred until the close of discovery. If the parties~~  
361 ~~are unable to agree to the terms of a discovery plan or any part thereof, the plaintiff~~  
362 ~~shall and any party may move the court for entry of a discovery order on any topic on~~  
363 ~~which the parties are unable to agree. Unless otherwise ordered by the court, the~~  
364 ~~presumptions established by these rules shall govern any subject not included within~~  
365 ~~the parties' stipulated discovery plan.~~

366 ~~(f)(4) Any party may request a scheduling and management conference or order~~  
367 ~~under Rule 16(b).~~

368 ~~(f)(5) A party joined after the meeting of the parties is bound by the stipulated~~  
369 ~~discovery plan and discovery order, unless the court orders on stipulation or motion a~~  
370 ~~modification of the discovery plan and order. The stipulation or motion shall be filed~~  
371 ~~within a reasonable time after joinder.~~

372 ~~(g)(f) Signing of~~ discovery requests, responses, and objections. Every disclosure,  
373 request for discovery, ~~or response~~ to a request for discovery or and objection thereto  
374 made by a party to a request for discovery shall be in writing and signed by at least one  
375 attorney of record or by the party if the party is not represented, ~~whose address shall be~~  
376 stated. The signature of the attorney or party constitutes is a certification ~~that the person~~  
377 ~~has read the request, response, or objection and that to the best of the person's~~  
378 ~~knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent~~  
379 ~~with these rules and warranted by existing law or a good faith argument for the~~  
380 ~~extension, modification, or reversal of existing law; (2) not interposed for any improper~~  
381 ~~purpose, such as to harass or to cause unnecessary delay or needless increase in the~~  
382 ~~cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given~~  
383 ~~the needs of the case, the discovery already had in the case, the amount in controversy,~~  
384 ~~and the importance of the issues at stake in the litigation~~ under Rule 11. If a request, or  
385 ~~response, or objection~~ is not signed, ~~it shall be stricken unless it is signed promptly after~~  
386 ~~the omission is called to the attention of the party making the request, response, or~~  
387 ~~objection, and a party shall not be obligated~~ does not need to take any action with  
388 respect to it ~~until it is signed~~.

389 If a certification is made in violation of the rule, the court, upon motion or upon its  
390 own initiative, ~~shall impose upon the person who made the certification, the party on~~  
391 ~~whose behalf the request, response, or objection is made, or both, an appropriate~~  
392 ~~sanction, which may include an order to pay the amount of the reasonable expenses~~  
393 ~~incurred because of the violation, including a reasonable attorney fee~~ may take any  
394 action authorized by Rule 11 or Rule 37(b)(2).

395 ~~(h)(g) Deposition where in~~ action pending in another state. Any party to an action ~~or~~  
396 proceeding in another state may take the deposition of any person within this state, in  
397 the same manner and subject to the same conditions and limitations as if such action ~~or~~  
398 proceeding were pending in this state, ~~provided that in order to obtain a subpoena the~~

399 ~~notice of the taking of such.~~ Notice of the deposition shall be filed with the clerk of the  
400 court of the county in which the person whose deposition is to be taken resides or is to  
401 be served, ~~and provided further that all matters arising during the taking of such~~  
402 ~~deposition which by the rules are.~~ Matters required to be submitted to the court shall be  
403 submitted to the court in the county where the deposition is being taken.

404 ~~(i)-(h)~~ Filing.

405 ~~(i)(1) Unless otherwise~~ Except as required by these rules or ordered by the court, a  
406 party shall not file with the court a disclosures, ~~or a~~ requests for discovery ~~with the court~~  
407 ~~or a response to a request for discovery,~~ but shall file only the ~~original~~ certificate of  
408 service stating that the disclosures, ~~or~~ requests for discovery ~~have~~ or response has  
409 been served on the other parties and the date of service. ~~Unless otherwise ordered by~~  
410 ~~the court, a party shall not file a response to a request for discovery with the court, but~~  
411 ~~shall file only the original certificate of service stating that the response has been served~~  
412 ~~on the other parties and the date of service. Except as provided in Rule 30(f)(1), Rule~~  
413 ~~32 or unless otherwise ordered by the court, depositions shall not be filed with the court.~~

414 ~~(i)(2) A party filing a motion under subdivision (c) or a motion under Rule 37(a) shall~~  
415 ~~attach to the motion a copy of the request for discovery or the response which is at~~  
416 ~~issue.~~

417 Advisory Committee Notes

418

419 Suggested by the Institute. Statement of concept only.

420 Rule 26B. Disclosure and discovery in personal injury actions.

421 In actions claiming damages for personal injuries, the claimant shall disclose the  
422 names and addresses of health care providers who have provided care for the condition  
423 for which damages are sought within five years prior to the date of injury, and shall  
424 produce all records from those providers or shall provide a waiver allowing the opposing  
425 party to obtain those records, subject to automatic protective provisions that restrict the  
426 use of the materials to the instant litigation. The defending party shall provide copies of  
427 all applicable insurance policies, and any insurance claims documents that address the  
428 facts of the case.

429

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

439  
440 Rule 26D. Disclosure and discovery in nnnnn.

441  
442

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) For the two tax years before the petition was filed, complete federal and state  
18 income tax returns, including Form W-2 and supporting tax schedules and attachments,  
19 filed by or on behalf of that party or by or on behalf of any entity in which the party has a  
20 majority or controlling interest, including, but not limited to, Form 1099 and Form K-1  
21 with respect to that party.

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

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

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

29 (c)(6) All statements for the 3 months before the petition was filed for all financial  
30 accounts, including, but not limited to checking, savings, money market funds,  
31 certificates of deposit, brokerage, investment, retirement, regardless of whether the

32 account has been closed including those held in that party's name, jointly with another  
33 person or entity, or as a trustee or guardian, or in someone else's name on that party's  
34 behalf.

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

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

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

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

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

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

53 Advisory Committee Notes

54 (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 these rules for disclosure and discovery,~~  
7 ~~except that stipulations~~ by filing, before the close of the initial fact discovery, a stipulated  
8 notice of extended discovery and a statement signed by the parties and lawyers that the  
9 additional discovery is necessary and proportionate and that each party has reviewed  
10 and approved a discovery budget. Stipulations extending the time for or limits of  
11 disclosure or discovery require ~~the court~~ approval ~~of the court~~ if ~~they~~ the extension  
12 would interfere with ~~the time set~~ a court order for completion of discovery or with the  
13 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; ~~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 person who may present evidence~~  
5 ~~under Rules 702, 703, or 705 of the Utah Rules of Evidence may not be deposed.~~

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

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

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

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

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

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

24 (b)(1) ~~A The party desiring to take the deposition of any person upon oral~~  
25 ~~examination deposing a witness shall give reasonable notice in writing to every other~~  
26 ~~party to the action. The notice shall state the date, time and place for taking the~~  
27 ~~deposition and the name and address of each person to be examined witness, if~~  
28 ~~known, and, if If the name of a witness is not known, a general description sufficient the~~  
29 ~~notice shall describe the witness sufficiently to identify the person or state the particular~~  
30 ~~class or group to which the person belongs. If a subpoena duces tecum is to be served~~  
31 ~~on the person to be examined, the designation of the materials to be produced as set~~

32 ~~forth in the subpoena shall be attached to or included in the notice. The notice shall~~  
33 ~~designate any documents and tangible things to be produced by a witness. The notice~~  
34 ~~shall designate the officer who will conduct the deposition.~~

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

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

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

60 ~~(b)(5)-(b)(4)~~ The notice to a party deponent witness may be accompanied by a  
61 request ~~made in compliance with under~~ Rule 34 for the production of documents and  
62 tangible things at the ~~taking of the~~ deposition. The procedure of Rule 34 shall apply to

63 the request. The attendance of a nonparty witness may be compelled by subpoena  
64 under Rule 45. Documents and tangible things to be produced shall be stated in the  
65 subpoena.

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

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

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

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

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

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

87 (b)(7)(D) Within 14 days after the questions are served, a party may serve cross  
88 questions. Within 7 days after being served with cross questions, a party may serve  
89 redirect questions. Within 7 days after being served with redirect questions, a party may  
90 serve recross questions.

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

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

93 ~~(c)(1) Examination and cross-examination Questioning~~ of witnesses may proceed as  
94 permitted at the trial under ~~the provisions of~~ the Utah Rules of Evidence, except Rules  
95 103 and 615. ~~The officer before whom the deposition is to be taken shall put the~~  
96 ~~witnesses on oath or affirmation and shall personally, or by someone acting under the~~  
97 ~~officer's direction and in the officer's presence, record the testimony of the witness.~~

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

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

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

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

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

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

135 (d) Limits. During initial fact discovery, each side (plaintiffs collectively, defendants  
136 collectively, and third-party defendants collectively) is limited to 20 hours of deposition  
137 by oral questioning. Oral questioning of a nonparty shall not exceed four hours, and oral  
138 questioning of a party shall not exceed seven hours. A deposition by written questioning  
139 shall not cumulatively exceed 15 questions, including discrete subparts, by the plaintiffs  
140 collectively, by the defendants collectively or by third-party defendants collectively.

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

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

151 ~~(f)(1) The transcript or other recording of the deposition made in accordance with~~  
152 ~~this rule shall be the record of the deposition. The officer shall record the deposition or~~  
153 ~~direct another person present to record the deposition. The officer shall sign a~~  
154 ~~certificate, to accompany the record of the deposition, that the witness was duly sworn~~

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

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

181 (f)(3) Unless otherwise ordered by the court or agreed by the parties, the officer shall  
182 retain stenographic notes of any depositions taken stenographically or a copy of the  
183 recording of any deposition taken by another method. Upon payment of reasonable  
184 charges therefor, the officer shall furnish a copy of the record of the deposition to any  
185 party or to the deponent witness. Any party or the deponent may arrange for a

186 ~~transcription to be made from the recording of a deposition taken~~ An official transcript of  
187 a recording made by non-stenographic means shall be prepared under Utah Rule of  
188 Appellate Procedure 11(e).

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

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

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

202 Advisory Committee Notes

203

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

63 reasonable expenses of proving the matter, including reasonable attorney fees. The  
64 court shall enter the order unless it finds that:

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

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

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

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

70 ~~(b)-(d)~~ Effect of admission. Any matter admitted under this rule is conclusively  
71 established unless the court on motion permits withdrawal or amendment of the  
72 admission. ~~Subject to the provisions of Rule 16 governing amendment of a pretrial~~  
73 ~~order, the~~ The court may permit withdrawal or amendment ~~when if~~ the presentation of  
74 the merits of the action will be ~~subverted thereby promoted~~ and ~~the party who obtained~~  
75 ~~the admission fails to satisfy the court that~~ withdrawal or amendment will not prejudice  
76 ~~him in maintaining his action or defense on the merits~~ the requesting party. Any  
77 admission ~~made by a party~~ under this rule is for the purpose of the pending action and  
78 ~~and It~~ is not an admission ~~by him~~ for any other purpose, nor may it be used ~~against him~~  
79 in any other ~~proceeding action~~.

80 Advisory Committee Notes

81

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

2 (a) Motion for order compelling disclosure or discovery. ~~A party, upon reasonable~~  
3 ~~notice to other parties and all persons affected thereby, may apply for an order~~  
4 ~~compelling discovery as follows:~~

5 ~~(a)(1) Appropriate court. An application for an order to a party may be made to the~~  
6 ~~court in which the action is pending, or, on matters relating to a deposition, to the court~~  
7 ~~in the district where the deposition is being taken. An application for an order to a~~  
8 ~~deponent who is not a party shall be made to the court in the district where the~~  
9 ~~deposition is being taken.~~

10 ~~(a)(2)-(a)(1) Motion.~~

11 ~~(a)(2)(A) If a party fails to make a disclosure required by Rule 26(a), any other A~~  
12 ~~party may move to compel disclosure or discovery and for appropriate sanctions if~~  
13 ~~another party:~~

14 ~~(a)(1)(A) makes an evasive, incomplete or insufficient disclosure or response to a~~  
15 ~~request for discovery;~~

16 ~~(a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement~~  
17 ~~a disclosure or response or makes a supplemental disclosure or response without an~~  
18 ~~adequate explanation of why the additional or correct information was not previously~~  
19 ~~provided;~~

20 ~~(a)(1)(C) objects to a request for discovery;~~

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

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

23 ~~(a)(2) Appropriate court. A motion may be made to the court in which the action is~~  
24 ~~pending, or, on matters relating to a deposition, to the court in the district where the~~  
25 ~~deposition is being taken. A motion for an order to a nonparty witness shall be made to~~  
26 ~~the court in the district where the deposition is being taken.~~

27 ~~(a)(3) The motion must include movant must attach a copy of the request for~~  
28 ~~discovery or the response at issue and~~ a certification that the movant has in good faith  
29 conferred or attempted to confer with the party not making the disclosure or discovery in  
30 an effort to secure the disclosure or discovery without court action.

31 ~~(a)(2)(B) If a deponent fails to answer a question propounded or submitted under~~  
32 ~~Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule~~  
33 ~~30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or~~  
34 ~~if a party, in response to a request for inspection submitted under Rule 34, fails to~~  
35 ~~respond that inspection will be permitted as requested or fails to permit inspection as~~  
36 ~~requested, the discovering party may move for an order compelling an answer, or a~~  
37 ~~designation, or an order compelling inspection in accordance with the request. The~~  
38 ~~motion must include a certification that the movant has in good faith conferred or~~  
39 ~~attempted to confer with the person or party failing to make the discovery in an effort to~~  
40 ~~secure the information or material without court action. When taking a deposition on oral~~  
41 ~~examination, the proponent of the question may complete or adjourn the examination~~  
42 ~~before applying for an order.~~

43 ~~(a)(3) Evasive or incomplete disclosure, answer, or response. For purposes of this~~  
44 ~~subdivision an evasive or incomplete disclosure, answer, or response is to be treated as~~  
45 ~~a failure to disclose, answer, or respond.~~

46 (a)(4) Expenses and sanctions.

47 (a)(4)(A) If the motion is granted, or if the disclosure or ~~requested~~ discovery is  
48 provided after the motion was filed, the court shall, after opportunity for ~~hearing~~  
49 response, require the party or deponent witness whose conduct necessitated the motion  
50 or the party or attorney advising such conduct or both of them to pay to the moving  
51 party the reasonable expenses incurred in obtaining the order, including attorney fees,  
52 unless the court finds that the ~~motion was filed without the~~ movant's first making did not  
53 make a good faith effort to obtain the disclosure or discovery without court action, or  
54 that the ~~opposing party's~~ nondisclosure, response, or objection was substantially  
55 justified, or that other circumstances make an award of expenses unjust.

56 (a)(4)(B) If the motion is denied, the court may enter any protective order authorized  
57 under Rule 26(c) and shall, after opportunity for ~~hearing response~~, require the moving  
58 party or the attorney or both of them to pay to the party or deponent witness who  
59 opposed the motion the reasonable expenses incurred in opposing the motion, including  
60 attorney fees, unless the court finds that ~~the making of~~ the motion was substantially  
61 justified or that other circumstances make an award of expenses unjust.

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

66 (b) Failure to comply with order.

67 (b)(1) Sanctions by court in district where deposition is taken. ~~If a deponent fails to~~  
68 ~~be sworn or to answer a question after being directed to do so by~~ Failure to follow an  
69 order of the court in the district in which the deposition is being taken, ~~the failure may be~~  
70 ~~considered a~~ is contempt of that court.

71 (b)(2) Sanctions by court in which action is pending. ~~If a party fails to obey an order~~  
72 ~~entered under Rule 16(b) or if a party or an officer, director, or managing agent of a~~  
73 ~~party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party~~  
74 ~~fails to obey an order to provide or permit discovery, including an order made under~~  
75 ~~Subdivision (a) of this rule or Rule 35, unless~~ Unless the court finds that the failure was  
76 substantially justified, the court in which the action is pending may take such action in  
77 regard to the failure to follow its orders as are just, including the following:

78 (b)(2)(A) deem the matter or any other designated facts to be established ~~for the~~  
79 ~~purposes of the action~~ in accordance with the claim of the party obtaining the order;

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

82 (b)(2)(C) ~~strike pleadings or parts thereof~~, stay further proceedings until the order is  
83 obeyed;

84 (b)(2)(D) dismiss all or part of the action ~~or proceeding or any part thereof~~, strike all  
85 or part of the pleadings, or render judgment by default ~~against the disobedient party on~~  
86 all or part of the action;

87 ~~(b)(2)(D)~~ (b)(2)(E) order the party or the attorney to pay the reasonable expenses,  
88 including attorney fees, caused by the failure;

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

91 ~~(b)(2)(F)~~ (b)(2)(G) instruct the jury regarding an adverse inference.

92 ~~(c) Expenses on failure to admit. If a party fails to admit the genuineness of any~~  
93 ~~document or the truth of any matter as requested under Rule 36, and if the party~~  
94 ~~requesting the admissions thereafter proves the genuineness of the document or the~~  
95 ~~truth of the matter, the party requesting the admissions may apply to the court for an~~  
96 ~~order requiring the other party to pay the reasonable expenses incurred in making that~~  
97 ~~proof, including reasonable attorney fees. The court shall make the order unless it finds~~  
98 ~~that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission~~  
99 ~~sought was of no substantial importance, or (3) the party failing to admit had reasonable~~  
100 ~~ground to believe that he might prevail on the matter, or (4) there was other good~~  
101 ~~reason for the failure to admit.~~

102 ~~(d) Failure of party to attend at own deposition or serve answers to interrogatories or~~  
103 ~~respond to request for inspection. If a party or an officer, director, or managing agent of~~  
104 ~~a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a~~  
105 ~~party fails (1) to appear before the officer who is to take the deposition, after being~~  
106 ~~served with a proper notice, or (2) to serve answers or objections to interrogatories~~  
107 ~~submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a~~  
108 ~~written response to a request for inspection submitted under Rule 34, after proper~~  
109 ~~service of the request, the court on motion may take any action authorized by~~  
110 ~~Subdivision (b)(2).~~

111 ~~The failure to act described in this subdivision may not be excused on the ground~~  
112 ~~that the discovery sought is objectionable unless the party failing to act has applied for a~~  
113 ~~protective order as provided by Rule 26(c).~~

114 ~~(e) Failure to participate in the framing of a discovery plan. If a party or attorney fails~~  
115 ~~to participate in good faith in the framing of a discovery plan by agreement as is~~  
116 ~~required by Rule 26(f), the court on motion may take any action authorized by~~  
117 ~~Subdivision (b)(2).~~

118 ~~(f) Failure to disclose. If a party fails to disclose a witness, document or other~~  
119 ~~material as required by Rule 26(a) or Rule 26(e)(1), or to amend a prior response to~~  
120 ~~discovery as required by Rule 26(e)(2), that party shall not be permitted to use the~~  
121 ~~witness, document or other material at any hearing unless the failure to disclose is~~  
122 ~~harmless or the party shows good cause for the failure to disclose. In addition to or in~~

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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