

1 Rule 26. General provisions governing discovery.

2 (a) Required disclosures; Discovery methods.

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

6 (a)(1)(A) the name and, if known, the address and telephone number of each
7 individual likely to have discoverable information supporting its claims or defenses,
8 unless solely for impeachment, identifying the subjects of the information;

9 (a)(1)(B) a copy of, or a description by category and location of, all discoverable
10 documents, data compilations, [electronically stored information](#), and tangible things in
11 the possession, custody, or control of the party supporting its claims or defenses, unless
12 solely for impeachment;

13 (a)(1)(C) a computation of any category of damages claimed by the disclosing party,
14 making available for inspection and copying as under Rule 34 all discoverable
15 documents or other evidentiary material on which such computation is based, including
16 materials bearing on the nature and extent of injuries suffered; and

17 (a)(1)(D) for inspection and copying as under Rule 34 any insurance agreement
18 under which any person carrying on an insurance business may be liable to satisfy part
19 or all of a judgment which may be entered in the case or to indemnify or reimburse for
20 payments made to satisfy the judgment.

21 Unless otherwise stipulated by the parties or ordered by the court, the disclosures
22 required by subdivision (a)(1) shall be made within 14 days after the meeting of the
23 parties under subdivision (f). Unless otherwise stipulated by the parties or ordered by
24 the court, a party joined after the meeting of the parties shall make these disclosures
25 within 30 days after being served. A party shall make initial disclosures based on the
26 information then reasonably available and is not excused from making disclosures
27 because the party has not fully completed the investigation of the case or because the
28 party challenges the sufficiency of another party's disclosures or because another party
29 has not made disclosures.

30 (a)(2) Exemptions.

31 (a)(2)(A) The requirements of subdivision (a)(1) and subdivision (f) do not apply to
32 actions:

33 (a)(2)(A)(i) based on contract in which the amount demanded in the pleadings is
34 \$20,000 or less;

35 (a)(2)(A)(ii) for judicial review of adjudicative proceedings or rule making
36 proceedings of an administrative agency;

37 (a)(2)(A)(iii) governed by Rule 65B or Rule 65C;

38 (a)(2)(A)(iv) to enforce an arbitration award;

39 (a)(2)(A)(v) for water rights general adjudication under Title 73, Chapter 4; and

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

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

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

45 (a)(3)(A) A party shall disclose to other parties the identity of any person who may
46 be used at trial to present evidence under Rules 702, 703, or 705 of the Utah Rules of
47 Evidence.

48 (a)(3)(B) Unless otherwise stipulated by the parties or ordered by the court, this
49 disclosure shall, with respect to a witness who is retained or specially employed to
50 provide expert testimony in the case or whose duties as an employee of the party
51 regularly involve giving expert testimony, be accompanied by a written report prepared
52 and signed by the witness or party. The report shall contain the subject matter on which
53 the expert is expected to testify; the substance of the facts and opinions to which the
54 expert is expected to testify; a summary of the grounds for each opinion; the
55 qualifications of the witness, including a list of all publications authored by the witness
56 within the preceding ten years; the compensation to be paid for the study and testimony;
57 and a listing of any other cases in which the witness has testified as an expert at trial or
58 by deposition within the preceding four years.

59 (a)(3)(C) Unless otherwise stipulated by the parties or ordered by the court, the
60 disclosures required by subdivision (a)(3) shall be made within 30 days after the
61 expiration of fact discovery as provided by subdivision (d) or, if the evidence is intended

62 solely to contradict or rebut evidence on the same subject matter identified by another
63 party under paragraph (3)(B), within 60 days after the disclosure made by the other
64 party.

65 (a)(4) Pretrial disclosures. A party shall provide to other parties the following
66 information regarding the evidence that it may present at trial other than solely for
67 impeachment:

68 (a)(4)(A) the name and, if not previously provided, the address and telephone
69 number of each witness, separately identifying witnesses the party expects to present
70 and witnesses the party may call if the need arises;

71 (a)(4)(B) the designation of witnesses whose testimony is expected to be presented
72 by means of a deposition and, if not taken stenographically, a transcript of the pertinent
73 portions of the deposition testimony; and

74 (a)(4)(C) an appropriate identification of each document or other exhibit, including
75 summaries of other evidence, separately identifying those which the party expects to
76 offer and those which the party may offer if the need arises.

77 Unless otherwise stipulated by the parties or ordered by the court, the disclosures
78 required by subdivision (a)(4) shall be made at least 30 days before trial. Within 14 days
79 thereafter, unless a different time is specified by the court, a party may serve and file a
80 list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated
81 by another party under subparagraph (B) and (ii) any objection, together with the
82 grounds therefor, that may be made to the admissibility of materials identified under
83 subparagraph (C). Objections not so disclosed, other than objections under Rules 402
84 and 403 of the Utah Rules of Evidence, shall be deemed waived unless excused by the
85 court for good cause shown.

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

89 (a)(6) Methods to discover additional matter. Parties may obtain discovery by one or
90 more of the following methods: depositions upon oral examination or written questions;
91 written interrogatories; production of documents or things or permission to enter upon

92 land or other property, for inspection and other purposes; physical and mental
93 examinations; and requests for admission.

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

96 (b)(1) In general. Parties may obtain discovery regarding any matter, not privileged,
97 which is relevant to the subject matter involved in the pending action, whether it relates
98 to the claim or defense of the party seeking discovery or to the claim or defense of any
99 other party, including the existence, description, nature, custody, condition, and location
100 of any books, documents, or other tangible things and the identity and location of
101 persons having knowledge of any discoverable matter. It is not ground for objection that
102 the information sought will be inadmissible at the trial if the information sought appears
103 reasonably calculated to lead to the discovery of admissible evidence.

104 (b)(2) A party need not provide discovery of electronically stored information from
105 sources that the party identifies as not reasonably accessible because of undue burden
106 or cost. The party shall expressly make any claim that the source is not reasonably
107 accessible, describing the source, the nature and extent of the burden, the nature of the
108 information not provided, and any other information that will enable other parties to
109 assess the claim. On motion to compel discovery or for a protective order, the party
110 from whom discovery is sought must show that the information is not reasonably
111 accessible because of undue burden or cost. If that showing is made, the court may
112 order discovery from such sources if the requesting party shows good cause,
113 considering the limitations of subsection (b)(3). The court may specify conditions for the
114 discovery.

115 ~~(b)(2)-(b)(3)~~ Limitations. The frequency or extent of use of the discovery methods set
116 forth in Subdivision (a)(6) shall be limited by the court if it determines that:

117 ~~(i)-(b)(3)(A)~~ the discovery sought is unreasonably cumulative or duplicative, or is
118 obtainable from some other source that is more convenient, less burdensome, or less
119 expensive;

120 ~~(ii)-(b)(3)(B)~~ the party seeking discovery has had ample opportunity by discovery in
121 the action to obtain the information sought; or

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

126 ~~(b)(3)~~(b)(4) Trial preparation: Materials. Subject to the provisions of Subdivision
127 ~~(b)(4)~~(b)(5) of this rule, a party may obtain discovery of documents and tangible things
128 otherwise discoverable under Subdivision (b)(1) of this rule and prepared in anticipation
129 of litigation or for trial by or for another party or by or for that other party's representative
130 (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only
131 upon a showing that the party seeking discovery has substantial need of the materials in
132 the preparation of the case and that the party is unable without undue hardship to obtain
133 the substantial equivalent of the materials by other means. In ordering discovery of such
134 materials when the required showing has been made, the court shall protect against
135 disclosure of the mental impressions, conclusions, opinions, or legal theories of an
136 attorney or other representative of a party concerning the litigation.

137 A party may obtain without the required showing a statement concerning the action
138 or its subject matter previously made by that party. Upon request, a person not a party
139 may obtain without the required showing a statement concerning the action or its
140 subject matter previously made by that person. If the request is refused, the person may
141 move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses
142 incurred in relation to the motion. For purposes of this paragraph, a statement
143 previously made is (A) a written statement signed or otherwise adopted or approved by
144 the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or
145 a transcription thereof, which is a substantially verbatim recital of an oral statement by
146 the person making it and contemporaneously recorded.

147 ~~(b)(4)~~(b)(5) Trial preparation: Experts.

148 ~~(b)(4)(A)~~(b)(5)(A) A party may depose any person who has been identified as an
149 expert whose opinions may be presented at trial. If a report is required under
150 subdivision (a)(3)(B), any deposition shall be conducted within 60 days after the report
151 is provided.

152 ~~(b)(4)(B)~~ (b)(5)(B) A party may discover facts known or opinions held by an expert
153 who has been retained or specially employed by another party in anticipation of litigation
154 or preparation for trial and who is not expected to be called as a witness at trial, only as
155 provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is
156 impracticable for the party seeking discovery to obtain facts or opinions on the same
157 subject by other means.

158 ~~(b)(4)(C)~~ (b)(5)(C) Unless manifest injustice would result,

159 ~~(b)(4)(C)(i)~~ (b)(5)(C)(i) The court shall require that the party seeking discovery pay
160 the expert a reasonable fee for time spent in responding to discovery under Subdivision
161 ~~(b)(4)~~ (b)(5) of this rule; and

162 ~~(b)(4)(C)(ii)~~ (b)(5)(C)(ii) With respect to discovery obtained under Subdivision
163 ~~(b)(4)(A)~~ (b)(5)(A) of this rule the court may require, and with respect to discovery
164 obtained under Subdivision ~~(b)(4)(B)~~ (b)(5)(B) of this rule the court shall require, the
165 party seeking discovery to pay the other party a fair portion of the fees and expenses
166 reasonably incurred by the latter party in obtaining facts and opinions from the expert.

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

168 (b)(6)(A) Information withheld. When a party withholds information otherwise
169 discoverable under these rules by claiming that it is privileged or subject to protection as
170 trial preparation material, the party shall make the claim expressly and shall describe
171 the nature of the documents, communications, or things not produced or disclosed in a
172 manner that, without revealing information itself privileged or protected, will enable other
173 parties to assess the applicability of the privilege or protection.

174 (b)(6)(B) Information produced. If information is produced in discovery that is subject
175 to a claim of privilege or of protection as trial-preparation material, the party making the
176 claim may notify any party that received the information of the claim and the basis for it.
177 After being notified, a party must promptly return, sequester, or destroy the specified
178 information and any copies it has and may not use or disclose the information until the
179 claim is resolved. A receiving party may promptly present the information to the court
180 under seal for a determination of the claim. If the receiving party disclosed the
181 information before being notified, it must take reasonable steps to retrieve it. The
182 producing party must preserve the information until the claim is resolved.

183 (c) Protective orders. Upon motion by a party or by the person from whom discovery
184 is sought, accompanied by a certification that the movant has in good faith conferred or
185 attempted to confer with other affected parties in an effort to resolve the dispute without
186 court action, and for good cause shown, the court in which the action is pending or
187 alternatively, on matters relating to a deposition, the court in the district where the
188 deposition is to be taken may make any order which justice requires to protect a party or
189 person from annoyance, embarrassment, oppression, or undue burden or expense,
190 including one or more of the following:

191 (c)(1) that the discovery not be had;

192 (c)(2) that the discovery may be had only on specified terms and conditions,
193 including a designation of the time or place;

194 (c)(3) that the discovery may be had only by a method of discovery other than that
195 selected by the party seeking discovery;

196 (c)(4) that certain matters not be inquired into, or that the scope of the discovery be
197 limited to certain matters;

198 (c)(5) that discovery be conducted with no one present except persons designated
199 by the court;

200 (c)(6) that a deposition after being sealed be opened only by order of the court;

201 (c)(7) that a trade secret or other confidential research, development, or commercial
202 information not be disclosed or be disclosed only in a designated way;

203 (c)(8) that the parties simultaneously file specified documents or information
204 enclosed in sealed envelopes to be opened as directed by the court.

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

209 (d) Sequence and timing of discovery. Except for cases exempt under subdivision
210 (a)(2), except as authorized under these rules, or unless otherwise stipulated by the
211 parties or ordered by the court, a party may not seek discovery from any source before
212 the parties have met and conferred as required by subdivision (f). Unless otherwise
213 stipulated by the parties or ordered by the court, fact discovery shall be completed

214 within 240 days after the first answer is filed. Unless the court upon motion, for the
215 convenience of parties and witnesses and in the interests of justice, orders otherwise,
216 methods of discovery may be used in any sequence and the fact that a party is
217 conducting discovery, whether by deposition or otherwise, shall not operate to delay any
218 other party's discovery.

219 (e) Supplementation of responses. A party who has made a disclosure under
220 subdivision (a) or responded to a request for discovery with a response is under a duty
221 to supplement the disclosure or response to include information thereafter acquired if
222 ordered by the court or in the following circumstances:

223 (e)(1) A party is under a duty to supplement at appropriate intervals disclosures
224 under subdivision (a) if the party learns that in some material respect the information
225 disclosed is incomplete or incorrect and if the additional or corrective information has
226 not otherwise been made known to the other parties during the discovery process or in
227 writing. With respect to testimony of an expert from whom a report is required under
228 subdivision (a)(3)(B) the duty extends both to information contained in the report and to
229 information provided through a deposition of the expert.

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

235 (f) Discovery and scheduling conference.

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

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

245 (f)(2) The plan shall include:

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

249 (f)(2)(B) the subjects on which discovery may be needed, when discovery should be
250 completed, whether discovery should be conducted in phases and whether discovery
251 should be limited to particular issues;

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

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

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

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

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

262 (f)(3) Plaintiff's counsel shall submit to the court within 14 days after the meeting and
263 in any event no more than 60 days after the first answer is filed a proposed form of
264 order in conformity with the parties' stipulated discovery plan. The proposed form of
265 order shall also include each of the subjects listed in Rule 16(b)(1)-(6), except that the
266 date or dates for pretrial conferences, final pretrial conference and trial shall be
267 scheduled with the court or may be deferred until the close of discovery. If the parties
268 are unable to agree to the terms of a discovery plan or any part thereof, the plaintiff
269 shall and any party may move the court for entry of a discovery order on any topic on
270 which the parties are unable to agree. Unless otherwise ordered by the court, the
271 presumptions established by these rules shall govern any subject not included within
272 the parties' stipulated discovery plan.

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

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

279 (g) Signing of discovery requests, responses, and objections. Every request for
280 discovery or response or objection thereto made by a party shall be signed by at least
281 one attorney of record or by the party if the party is not represented, whose address
282 shall be stated. The signature of the attorney or party constitutes a certification that the
283 person has read the request, response, or objection and that to the best of the person's
284 knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent
285 with these rules and warranted by existing law or a good faith argument for the
286 extension, modification, or reversal of existing law; (2) not interposed for any improper
287 purpose, such as to harass or to cause unnecessary delay or needless increase in the
288 cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given
289 the needs of the case, the discovery already had in the case, the amount in controversy,
290 and the importance of the issues at stake in the litigation. If a request, response, or
291 objection is not signed, it shall be stricken unless it is signed promptly after the omission
292 is called to the attention of the party making the request, response, or objection, and a
293 party shall not be obligated to take any action with respect to it until it is signed.

294 If a certification is made in violation of the rule, the court, upon motion or upon its
295 own initiative, shall impose upon the person who made the certification, the party on
296 whose behalf the request, response, or objection is made, or both, an appropriate
297 sanction, which may include an order to pay the amount of the reasonable expenses
298 incurred because of the violation, including a reasonable attorney fee.

299 (h) Deposition where action pending in another state. Any party to an action or
300 proceeding in another state may take the deposition of any person within this state, in
301 the same manner and subject to the same conditions and limitations as if such action or
302 proceeding were pending in this state, provided that in order to obtain a subpoena the
303 notice of the taking of such deposition shall be filed with the clerk of the court of the
304 county in which the person whose deposition is to be taken resides or is to be served,
305 and provided further that all matters arising during the taking of such deposition which

306 by the rules are required to be submitted to the court shall be submitted to the court in
307 the county where the deposition is being taken.

308 (i) Filing.

309 (i)(1) Unless otherwise ordered by the court, a party shall not file disclosures or
310 requests for discovery with the court, but shall file only the original certificate of service
311 stating that the disclosures or requests for discovery have been served on the other
312 parties and the date of service. Unless otherwise ordered by the court, a party shall not
313 file a response to a request for discovery with the court, but shall file only the original
314 certificate of service stating that the response has been served on the other parties and
315 the date of service. Except as provided in Rule 30(f)(1), Rule 32 or unless otherwise
316 ordered by the court, depositions shall not be filed with the court.

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

320