

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

2       (a) **Disclosure.** This rule applies unless changed or supplemented by a rule  
3 governing disclosure and discovery in a practice area.

4           (a)(1) **Initial disclosures.** Except in cases exempt under paragraph (a)(3), a  
5 party shall, without waiting for a discovery request, ~~provide to serve on the~~ other  
6 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  
9 supporting its claims or defenses, unless solely for impeachment, identifying  
10 the subjects of the information; and

11           (a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and,  
12 except for an adverse party, a summary of the expected testimony;

13           (a)(1)(B) a copy of all documents, data compilations, electronically stored  
14 information, and tangible things in the possession or control of the party that the  
15 party may offer in its case-in-chief, except charts, summaries and demonstrative  
16 exhibits that have not yet been prepared and must be disclosed in accordance  
17 with paragraph (a)(5);

18           (a)(1)(C) a computation of any damages claimed and a copy of all  
19 discoverable documents or evidentiary material on which such computation is  
20 based, including materials about the nature and extent of injuries suffered;

21           (a)(1)(D) a copy of any agreement under which any person may be liable to  
22 satisfy part or all of a judgment or to indemnify or reimburse for payments made  
23 to satisfy the judgment; and

24           (a)(1)(E) a copy of all documents to which a party refers in its pleadings.

25       (a)(2) **Timing of initial disclosures.** The disclosures required by paragraph  
26 (a)(1) shall be ~~made served on the other parties~~:

27           (a)(2)(A) by the plaintiff within 14 days after service of the first answer to the  
28 complaint; and

29 (a)(2)(B) by the defendant within 28-42 days after ~~the plaintiff's first disclosure~~  
30 the service of the first answer to the complaint or within 28 days after that  
31 defendant's appearance, whichever is later.

32 (a)(3) **Exemptions.**

33 (a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties,  
34 the requirements of paragraph (a)(1) do not apply to actions:

35 (a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making  
36 proceedings of an administrative agency;

37 (a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

38 (a)(3)(A)(iii) to enforce an arbitration award;

39 (a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4,  
40 Determination of Water Rights.

41 (a)(3)(B) In an exempt action, the matters subject to disclosure under  
42 paragraph (a)(1) are subject to discovery under paragraph (b).

43 (a)(4) **Expert testimony.**

44 (a)(4)(A) **Disclosure of expert testimony.** A party shall, without waiting for a  
45 discovery request, ~~provide to serve on~~ the other parties the following information  
46 regarding any person who may be used at trial to present evidence under Rule  
47 702 of the Utah Rules of Evidence and who is retained or specially employed to  
48 provide expert testimony in the case or whose duties as an employee of the party  
49 regularly involve giving expert testimony: (i) the expert's name and qualifications,  
50 including a list of all publications authored within the preceding 10 years, and a  
51 list of any other cases in which the expert has testified as an expert at trial or by  
52 deposition within the preceding four years, (ii) a brief summary of the opinions to  
53 which the witness is expected to testify, (iii) all data and other information that will  
54 be relied upon by the witness in forming those opinions, and (iv) the  
55 compensation to be paid for the witness's study and testimony.

56 (a)(4)(B) **Limits on expert discovery.** Further discovery may be obtained  
57 from an expert witness either by deposition or by written report. A deposition shall  
58 not exceed four hours and the party taking the deposition shall pay the expert's

59 reasonable hourly fees for attendance at the deposition. A report shall be signed  
60 by the expert and shall contain a complete statement of all opinions the expert  
61 will offer at trial and the basis and reasons for them. Such an expert may not  
62 testify in a party's case-in-chief concerning any matter not fairly disclosed in the  
63 report. The party offering the expert shall pay the costs for the report.

64 (a)(4)(C) **Timing for expert discovery.**

65 (a)(4)(C)(i) The party who bears the burden of proof on the issue for which  
66 expert testimony is offered shall ~~provide~~ serve on the other parties the  
67 information required by paragraph (a)(4)(A) within seven days after the close  
68 of fact discovery. Within seven days thereafter, the party opposing the expert  
69 may serve notice electing either a deposition of the expert pursuant to  
70 paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph  
71 (a)(4)(B). The deposition shall occur, or the report shall be ~~provided~~ served on  
72 the other parties, within 28 days after the election is ~~made~~ served on the other  
73 parties. If no election is ~~made~~ served on the other parties, then no further  
74 discovery of the expert shall be permitted.

75 (a)(4)(C)(ii) The party who does not bear the burden of proof on the issue  
76 for which expert testimony is offered shall ~~provide~~ serve on the other parties  
77 the information required by paragraph (a)(4)(A) within seven days after the  
78 later of ~~(i) (A)~~ the date on which the election under paragraph (a)(4)(C)(i) is  
79 due, or ~~(ii) (B)~~ receipt of the written report or the taking of the expert's  
80 deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter,  
81 the party opposing the expert may serve notice electing either a deposition of  
82 the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report  
83 pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall  
84 be ~~provided~~ served on the other parties, within 28 days after the election is  
85 ~~made~~ served on the other parties. If no election is ~~made~~ served on the other  
86 parties, then no further discovery of the expert shall be permitted.

87 (a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants  
88 to designate rebuttal expert witnesses it shall serve on the other parties the

89 information required by paragraph (a)(4)(A) within seven days after the later  
90 of (A) the date on which the election under paragraph (a)(4)(C)(i) is due, or  
91 (B) receipt of the written report or the taking of the expert's deposition  
92 pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party  
93 opposing the expert may serve notice electing either a deposition of the  
94 expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report  
95 pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall  
96 be served on the other parties, within 28 days after the election is served on  
97 the other parties. If no election is served on the other parties, then no further  
98 discovery of the expert shall be permitted.

99 (a)(4)(D) **Multiparty actions.** In multiparty actions, all parties opposing the  
100 expert must agree on either a report or a deposition. If all parties opposing the  
101 expert do not agree, then further discovery of the expert may be obtained only by  
102 deposition pursuant to paragraph (a)(4)(B) and Rule 30.

103 (a)(4)(E) **Summary of non-retained expert testimony.** If a party intends to  
104 present evidence at trial under Rule 702 of the Utah Rules of Evidence from any  
105 person other than an expert witness who is retained or specially employed to  
106 provide testimony in the case or a person whose duties as an employee of the  
107 party regularly involve giving expert testimony, that party must provide-serve on  
108 the other parties a written summary of the facts and opinions to which the  
109 witness is expected to testify in accordance with the deadlines set forth in  
110 paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

111 (a)(5) **Pretrial disclosures.**

112 (a)(5)(A) A party shall, without waiting for a discovery request, provide to  
113 serve on the other parties:

114 (a)(5)(A)(i) the name and, if not previously provided, the address and  
115 telephone number of each witness, unless solely for impeachment, separately  
116 identifying witnesses the party will call and witnesses the party may call;

117 (a)(5)(A)(ii) the name of witnesses whose testimony is expected to be  
118 presented by transcript of a deposition and a copy of the transcript with the  
119 proposed testimony designated; and

120 (a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and  
121 demonstrative exhibits, unless solely for impeachment, separately identifying  
122 those which the party will offer and those which the party may offer.

123 (a)(5)(B) Disclosure required by paragraph (a)(5) shall be made-served on the  
124 other parties at least 28 days before trial. At least 14 days before trial, a party  
125 shall serve and file counter designations of deposition testimony, objections and  
126 grounds for the objections to the use of a deposition and to the admissibility of  
127 exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of  
128 Evidence, objections not listed are waived unless excused by the court for good  
129 cause.

130 (b) **Discovery scope.**

131 (b)(1) **In general.** Parties may discover any matter, not privileged, which is  
132 relevant to the claim or defense of any party if the discovery satisfies the standards  
133 of proportionality set forth below. Privileged matters that are not discoverable or  
134 admissible in any proceeding of any kind or character include all information in any  
135 form provided during and created specifically as part of a request for an  
136 investigation, the investigation, findings, or conclusions of peer review, care review,  
137 or quality assurance processes of any organization of health care providers as  
138 defined in the Utah Health Care Malpractice Act for the purpose of evaluating care  
139 provided to reduce morbidity and mortality or to improve the quality of medical care,  
140 or for the purpose of peer review of the ethics, competence, or professional conduct  
141 of any health care provider.

142 (b)(2) **Proportionality.** Discovery and discovery requests are proportional if:

143 (b)(2)(A) the discovery is reasonable, considering the needs of the case, the  
144 amount in controversy, the complexity of the case, the parties' resources, the  
145 importance of the issues, and the importance of the discovery in resolving the  
146 issues;

147 (b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or  
148 expense;

149 (b)(2)(C) the discovery is consistent with the overall case management and  
150 will further the just, speedy and inexpensive determination of the case;

151 (b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

152 (b)(2)(E) the information cannot be obtained from another source that is more  
153 convenient, less burdensome or less expensive; and

154 (b)(2)(F) the party seeking discovery has not had sufficient opportunity to  
155 obtain the information by discovery or otherwise, taking into account the parties'  
156 relative access to the information.

157 (b)(3) **Burden.** The party seeking discovery always has the burden of showing  
158 proportionality and relevance. To ensure proportionality, the court may enter orders  
159 under Rule 37.

160 (b)(4) **Electronically stored information.** A party claiming that electronically  
161 stored information is not reasonably accessible because of undue burden or cost  
162 shall describe the source of the electronically stored information, the nature and  
163 extent of the burden, the nature of the information not provided, and any other  
164 information that will enable other parties to evaluate the claim.

165 (b)(5) **Trial preparation materials.** A party may obtain otherwise discoverable  
166 documents and tangible things prepared in anticipation of litigation or for trial by or  
167 for another party or by or for that other party's representative (including the party's  
168 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that  
169 the party seeking discovery has substantial need of the materials and that the party  
170 is unable without undue hardship to obtain substantially equivalent materials by  
171 other means. In ordering discovery of such materials, the court shall protect against  
172 disclosure of the mental impressions, conclusions, opinions, or legal theories of an  
173 attorney or other representative of a party.

174 (b)(6) **Statement previously made about the action.** A party may obtain without  
175 the showing required in paragraph (b)(5) a statement concerning the action or its  
176 subject matter previously made by that party. Upon request, a person not a party

177 may obtain without the required showing a statement about the action or its subject  
178 matter previously made by that person. If the request is refused, the person may  
179 move for a court order under Rule 37. A statement previously made is (A) a written  
180 statement signed or approved by the person making it, or (B) a stenographic,  
181 mechanical, electronic, or other recording, or a transcription thereof, which is a  
182 substantially verbatim recital of an oral statement by the person making it and  
183 contemporaneously recorded.

184 (b)(7) **Trial preparation; experts.**

185 (b)(7)(A) **Trial-preparation protection for draft reports or disclosures.**

186 Paragraph (b)(5) protects drafts of any report or disclosure required under  
187 paragraph (a)(4), regardless of the form in which the draft is recorded.

188 (b)(7)(B) **Trial-preparation protection for communications between a  
189 party's attorney and expert witnesses.** Paragraph (b)(5) protects

190 communications between the party's attorney and any witness required to  
191 provide disclosures under paragraph (a)(4), regardless of the form of the  
192 communications, except to the extent that the communications:

193 (b)(7)(B)(i) relate to compensation for the expert's study or testimony;

194 (b)(7)(B)(ii) identify facts or data that the party's attorney provided and that  
195 the expert considered in forming the opinions to be expressed; or

196 (b)(7)(B)(iii) identify assumptions that the party's attorney provided and  
197 that the expert relied on in forming the opinions to be expressed.

198 (b)(7)(C) **Expert employed only for trial preparation.** Ordinarily, a party  
199 may not, by interrogatories or otherwise, discover facts known or opinions held  
200 by an expert who has been retained or specially employed by another party in  
201 anticipation of litigation or to prepare for trial and who is not expected to be called  
202 as a witness at trial. A party may do so only:

203 (b)(7)(C)(i) as provided in Rule 35(b); or

204 (b)(7)(C)(ii) on showing exceptional circumstances under which it is  
205 impracticable for the party to obtain facts or opinions on the same subject by  
206 other means.

207 (b)(8) **Claims of privilege or protection of trial preparation materials.**

208 (b)(8)(A) **Information withheld.** If a party withholds discoverable information by  
209 claiming that it is privileged or prepared in anticipation of litigation or for trial, the  
210 party shall make the claim expressly and shall describe the nature of the documents,  
211 communications, or things not produced in a manner that, without revealing the  
212 information itself, will enable other parties to evaluate the claim.

213 (b)(8)(B) **Information produced.** If a party produces information that the party  
214 claims is privileged or prepared in anticipation of litigation or for trial, the producing  
215 party may notify any receiving party of the claim and the basis for it. After being  
216 notified, a receiving party must promptly return, sequester, or destroy the specified  
217 information and any copies it has and may not use or disclose the information until  
218 the claim is resolved. A receiving party may promptly present the information to the  
219 court under seal for a determination of the claim. If the receiving party disclosed the  
220 information before being notified, it must take reasonable steps to retrieve it. The  
221 producing party must preserve the information until the claim is resolved.

222 (c) **Methods, sequence and timing of discovery; tiers; limits on standard**  
223 **discovery; extraordinary discovery.**

224 (c)(1) **Methods of discovery.** Parties may obtain discovery by one or more of the  
225 following methods: depositions upon oral examination or written questions; written  
226 interrogatories; production of documents or things or permission to enter upon land  
227 or other property, for inspection and other purposes; physical and mental  
228 examinations; requests for admission; and subpoenas other than for a court hearing  
229 or trial.

230 (c)(2) **Sequence and timing of discovery.** Methods of discovery may be used in  
231 any sequence, and the fact that a party is conducting discovery shall not delay any  
232 other party's discovery. Except for cases exempt under paragraph (a)(3), a party  
233 may not seek discovery from any source before that party's initial disclosure  
234 obligations are satisfied.

235 (c)(3) **Definition of tiers for standard discovery.** Actions claiming \$50,000 or  
236 less in damages are permitted standard discovery as described for Tier 1. Actions

237 claiming more than \$50,000 and less than \$300,000 in damages are permitted  
 238 standard discovery as described for Tier 2. Actions claiming \$300,000 or more in  
 239 damages are permitted standard discovery as described for Tier 3. Absent an  
 240 accompanying damage claim for more than \$300,000, actions claiming non-  
 241 monetary relief are permitted standard discovery as described for Tier 2.

242 (c)(4) **Definition of damages.** For purposes of determining standard discovery,  
 243 the amount of damages includes the total of all monetary damages sought (without  
 244 duplication for alternative theories) by all parties in all claims for relief in the original  
 245 pleadings.

246 (c)(5) **Limits on standard fact discovery.** Standard fact discovery per side  
 247 (plaintiffs collectively, defendants collectively, and third-party defendants collectively)  
 248 in each tier is as follows. The days to complete standard fact discovery are  
 249 calculated from the date the first defendant's first disclosure is due and do not  
 250 include expert discovery under paragraphs(a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	\$50,000 or less	3	0	5	5	120
2	More than \$50,000 and less than \$300,000 or non-monetary relief	15	10	10	10	180
3	\$300,000 or more	30	20	20	20	210

251 (c)(6) **Extraordinary discovery.** To obtain discovery beyond the limits  
252 established in paragraph (c)(5), a party shall file:

253 (c)(6)(A) before the close of standard discovery and after reaching the limits  
254 of standard discovery imposed by these rules, a stipulated statement that  
255 extraordinary discovery is necessary and proportional under paragraph (b)(2)  
256 and that each party has reviewed and approved a discovery budget; or

257 (c)(6)(B) before the close of standard discovery and after reaching the limits  
258 of standard discovery imposed by these rules, a motion for extraordinary  
259 discovery setting forth the reasons why the extraordinary discovery is necessary  
260 and proportional under paragraph (b)(2) and certifying that the party has  
261 reviewed and approved a discovery budget and certifying that the party has in  
262 good faith conferred or attempted to confer with the other party in an effort to  
263 achieve a stipulation.

264 (d) **Requirements for disclosure or response; disclosure or response by an**  
265 **organization; failure to disclose; initial and supplemental disclosures and**  
266 **responses.**

267 (d)(1) A party shall make disclosures and responses to discovery based on the  
268 information then known or reasonably available to the party.

269 (d)(2) If the party providing disclosure or responding to discovery is a corporation,  
270 partnership, association, or governmental agency, the party shall act through one or  
271 more officers, directors, managing agents, or other persons, who shall make  
272 disclosures and responses to discovery based on the information then known or  
273 reasonably available to the party.

274 (d)(3) A party is not excused from making disclosures or responses because the  
275 party has not completed investigating the case or because the party challenges the  
276 sufficiency of another party's disclosures or responses or because another party has  
277 not made disclosures or responses.

278 (d)(4) If a party fails to disclose or to supplement timely a disclosure or response  
279 to discovery, that party may not use the undisclosed witness, document or material

280 at any hearing or trial unless the failure is harmless or the party shows good cause  
281 for the failure.

282 (d)(5) If a party learns that a disclosure or response is incomplete or incorrect in  
283 some important way, the party must timely ~~provide~~ serve on the other parties the  
284 additional or correct information if it has not been made known to the other parties.  
285 The supplemental disclosure or response must state why the additional or correct  
286 information was not previously provided.

287 (e) **Signing discovery requests, responses, and objections.** Every disclosure,  
288 request for discovery, response to a request for discovery and objection to a request for  
289 discovery shall be in writing and signed by at least one attorney of record or by the party  
290 if the party is not represented. The signature of the attorney or party is a certification  
291 under Rule 11. If a request or response is not signed, the receiving party does not need  
292 to take any action with respect to it. If a certification is made in violation of the rule, the  
293 court, upon motion or upon its own initiative, may take any action authorized by Rule 11  
294 or Rule 37(e).

295 (f) **Filing.** Except as required by these rules or ordered by the court, a party shall not  
296 file with the court a disclosure, a request for discovery or a response to a request for  
297 discovery, but shall file only the certificate of service stating that the disclosure, request  
298 for discovery or response has been served on the other parties and the date of service.

299 [Advisory Committee Notes](#)

300 **Legislative Note**

301