

Effective May 2, 2005. Subject to further change after comment period.

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 as
4 otherwise stipulated or directed by order, a party shall, without awaiting a discovery request,
5 provide to other parties:

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

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

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

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

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

28 (a)(2) Exemptions.

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

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

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

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

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

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

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

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

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

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

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

54 (a)(3)(C) Unless otherwise stipulated by the parties or ordered by the court, the disclosures
55 required by subdivision (a)(3) shall be made within 30 days after the expiration of fact discovery
56 as provided by subdivision (d) or, if the evidence is intended solely to contradict or rebut
57 evidence on the same subject matter identified by another party under paragraph (3)(B), within
58 60 days after the disclosure made by the other party.

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

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

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

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

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

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

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

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

87 (b)(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is
88 relevant to the subject matter involved in the pending action, whether it relates to the claim or
89 defense of the party seeking discovery or to the claim or defense of any other party, including the
90 existence, description, nature, custody, condition, and location of any books, documents, or other
91 tangible things and the identity and location of persons having knowledge of any discoverable

92 matter. It is not ground for objection that the information sought will be inadmissible at the trial
93 if the information sought appears reasonably calculated to lead to the discovery of admissible
94 evidence.

95 (b)(2) Limitations. The frequency or extent of use of the discovery methods set forth in
96 Subdivision (a)(6) shall be limited by the court if it determines that: (i) the discovery sought is
97 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
98 convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample
99 opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is
100 unduly burdensome or expensive, taking into account the needs of the case, the amount in
101 controversy, limitations on the parties' resources, and the importance of the issues at stake in the
102 litigation. The court may act upon its own initiative after reasonable notice or pursuant to a
103 motion under Subdivision (c).

104 (b)(3) Trial preparation: Materials. Subject to the provisions of Subdivision (b)(4) of this
105 rule, a party may obtain discovery of documents and tangible things otherwise discoverable
106 under Subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for
107 another party or by or for that other party's representative (including the party's attorney,
108 consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking
109 discovery has substantial need of the materials in the preparation of the case and that the party is
110 unable without undue hardship to obtain the substantial equivalent of the materials by other
111 means. In ordering discovery of such materials when the required showing has been made, the
112 court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal
113 theories of an attorney or other representative of a party concerning the litigation.

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

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123 (b)(4) Trial preparation: Experts.

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

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

132 (b)(4)(C) Unless manifest injustice would result,

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

136 (b)(4)(C)(ii) With respect to discovery obtained under Subdivision (b)(4)(A) of this rule the
137 court may require, and with respect to discovery obtained under Subdivision (b)(4)(B) of this
138 rule the court shall require, the party seeking discovery to pay the other party a fair portion of the
139 fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the
140 expert.

141 (b)(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party
142 withholds information otherwise discoverable under these rules by claiming that it is privileged
143 or subject to protection as trial preparation material, the party shall make the claim expressly and
144 shall describe the nature of the documents, communications, or things not produced or disclosed
145 in a manner that, without revealing information itself privileged or protected, will enable other
146 parties to assess the applicability of the privilege or protection.

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

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

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

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

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

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

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

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

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

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

171 (d) Sequence and timing of discovery. Except for cases exempt under subdivision (a)(2),
172 except as authorized under these rules, or unless otherwise stipulated by the parties or ordered by
173 the court, a party may not seek discovery from any source before the parties have met and
174 conferred as required by subdivision (f). Unless otherwise stipulated by the parties or ordered by
175 the court, fact discovery shall be completed within 240 days after the first answer is filed. Unless
176 the court upon motion, for the convenience of parties and witnesses and in the interests of justice,
177 orders otherwise, methods of discovery may be used in any sequence and the fact that a party is
178 conducting discovery, whether by deposition or otherwise, shall not operate to delay any other
179 party's discovery.

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

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

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

195 (f) Discovery and scheduling conference.

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

198 (f)(1) The parties shall, as soon as practicable after commencement of the action, meet in
199 person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the
200 possibilities for settlement of the action, to make or arrange for the disclosures required by
201 subdivision (a)(1), and to develop a stipulated discovery plan. Plaintiff's counsel shall schedule
202 the meeting. The attorneys of record shall be present at the meeting and shall attempt in good
203 faith to agree upon the discovery plan.

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

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

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

211 (f)(2)(C) what changes should be made in the limitations on discovery imposed under these
212 rules, and what other limitations should be imposed;

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

215 ~~(f)(2)(D)~~-(f)(2)(E) any other orders that should be entered by the court.

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

226 (f)(4) Any party may request a scheduling and management conference or order under Rule
227 16(b).

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

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

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

251 (h) Deposition where action pending in another state. Any party to an action or proceeding in
252 another state may take the deposition of any person within this state, in the same manner and
253 subject to the same conditions and limitations as if such action or proceeding were pending in
254 this state, provided that in order to obtain a subpoena the notice of the taking of such deposition
255 shall be filed with the clerk of the court of the county in which the person whose deposition is to
256 be taken resides or is to be served, and provided further that all matters arising during the taking
257 of such deposition which by the rules are required to be submitted to the court shall be submitted
258 to the court in the county where the deposition is being taken.

259 (i) Filing.

260 (i)(1) Unless otherwise ordered by the court, a party shall not file disclosures or requests for
261 discovery with the court, but shall file only the original certificate of service stating that the
262 disclosures or requests for discovery have been served on the other parties and the date of
263 service. Unless otherwise ordered by the court, a party shall not file a response to a request for
264 discovery with the court, but shall file only the original certificate of service stating that the
265 response has been served on the other parties and the date of service. Except as provided in Rule
266 30(f)(1), Rule 32 or unless otherwise ordered by the court, depositions shall not be filed with the
267 court.

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

270