

1 **Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under**
2 **Title 75 of the Utah Code.**

3 (a) **Scope.** This rule applies to all contested actions arising under Title 75 of the Utah Code.

4 (b) **Definition.** A probate dispute is a contested action arising under Title 75 of the Utah Code.

5 (c) **Designation of parties, objections, initial disclosures, and discovery.**

6 (c)(1) **Designation of Parties.** For purposes of Rule 26, the plaintiff in probate proceedings is
7 presumed to be the earliest petitioner in the matter, and the defendant is presumed to be any party
8 filing an objection. Once a probate dispute arises, and based on the facts and circumstances of the
9 case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes
10 of discovery. Only an interested person who has appeared through counsel or otherwise will be
11 treated as a party for purposes of discovery.

12 (c)(2) **Objections.**

13 (c)(2)(A) Any oral objection must be made in open court.

14 (c)(2)(B) Any oral objection must be reduced to writing, must set forth the grounds for the
15 objection and any supporting authority, and must be filed with the court and mailed to the parties
16 named in the petition and any interested persons as provided in Utah Code § 75-1-201(24) within
17 7 days of the date of the hearing unless the written objection has been previously filed with the
18 court.

19 (c)(2)(C) If the petitioner and objecting party agree to an extension of time to file the written
20 objection, notice of the stipulated date must be filed with the court.

21 (c)(2)(D) In the event no written objection is timely filed, the court will act on the original
22 petition upon the petitioner's filing of a request to submit pursuant to Rule 7 of the Utah Rules of
23 Civil Procedure.

24 (c)(3) **Initial disclosures in guardianship and conservatorship matters.**

25 (c)(3)(A) In addition to the disclosures required by Rule 26(a), and unless included in the
26 petition or redundant to the Rule 26(a) disclosures, the following documents, only as applicable to
27 the type of the probate dispute, must be served by the party in possession or control of the
28 documents within 14 days after a written objection has been filed. This paragraph supersedes
29 Rule 26(a)(2).

30 (c)(3)(B)(i) any document purporting to nominate a guardian or conservator, including a
31 will, trust, power of attorney, or advanced healthcare directive, copies of which must be
32 served upon all interested persons; and

33 (c)(3)(B)(ii) a list of less restrictive alternatives to guardianship or conservatorship that the
34 petitioner has explored and ways in which a guardianship or conservatorship of the
35 respondent may be limited.

36 (c)(3)(C) The initial disclosure documents must be served on the parties named in the probate
37 petition and the objection and anyone who has requested notice under Title 75 of the Utah Code:

38 (c)(3)(D) If there is a dispute regarding the validity of an original document, the proponent of
39 the original document must make it available for inspection by the contesting party within 14 days
40 of the date of referral to mediation unless the parties agree to a different date.

41 (c)(3)(E) The court may modify the content and timing of the disclosures required in this rule
42 or in Rule 26(a) for any reason justifying departure from these rules.

43 (c)(4) **Initial disclosures in all other probate matters.**

44 (c)(4)(A) In addition to the disclosures required by Rule 26(a), and unless included in the
45 petition or redundant to the Rule 26(a) disclosures, the following documents, only as applicable to
46 the type of the probate dispute, must be served by the party in possession or control of the
47 documents within 14 days after a written objection has been filed: any other document purporting
48 to nominate a representative after death, including wills, trusts, and any amendments to those
49 documents, copies of which must be served upon all interested persons. This paragraph
50 supersedes Rule 26(a)(2).

51 (c)(4)(C) The initial disclosure documents must be served on the parties named in the
52 probate petition and the objection and anyone who has requested notice under Title 75 of the
53 Utah Code.

54 (c)(4)(D) If there is a dispute regarding the validity of an original document, the proponent of
55 the original document must make it available for inspection by the contesting party within 14 days
56 of the date of referral to mediation unless the parties agree to a different date.

57 (c)(4)(E) The court may modify the content and timing of the disclosures required in this rule
58 or in Rule 26(a) for any reason justifying departure from these rules.

59 (c)(5) **Discovery once a probate dispute arises.** Except as provided in this rule or as otherwise
60 ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of
61 Civil Procedure, including the other provisions of Rule 26.

62 (d) **Pretrial disclosures, objections.** No later than 14 days prior to an evidentiary hearing or trial, the
63 parties must serve the disclosures required by Rule 26(a)(5)(A).
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