

**Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Titles 75, 75A, or 75B of the Utah Code.**

*Effective: ~~1/1/2020~~*

(a) **Scope.** This rule applies to all contested actions arising under Titles 75, 75A, or 75B of the Utah Code.

(b) **Definition.** A probate dispute is a contested action arising under Titles 75, 75A, or 75B of the Utah Code.

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

~~(e)~~(1) **Designation of Parties.** For purposes of Rule 26, the plaintiff in probate proceedings is presumed to be the petitioner in the matter, and the defendant is presumed to be any party who has made an objection. Once a probate dispute arises, and based on the facts and circumstances of the case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes of discovery. Only an interested person who has appeared on the record will be treated as a party for purposes of discovery.

~~(e)~~(2) **Objection to the petition.**

~~(e)~~(2)(A) Any oral objection made at a hearing on the petition must then be put into writing and filed with the court within seven<sup>7</sup> days, unless the written objection has been previously filed with the court. The court may for good cause, including in order to accommodate a person with a disability, waive the requirement of a writing and document the objection in the court record.

~~(e)~~(2)(B) A written objection must set forth the grounds for the objection and any supporting authority, must be filed with the court, and must be mailed to the parties named in the petition and any “interested persons,” as that term is defined in Utah Code section§ 75-1-201, unless the written objection has been previously filed with the court.

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

(e)(2)(D) The court may modify the timing for making an objection in accordance with [Rule 6\(b\)](#).

(e)(2)(E) In the event no written objection is timely filed, the court will act on the original petition upon the petitioner's filing of a request to submit pursuant to [Rule 7](#).

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

(e)(3)(A) ~~This paragraph supersedes Rule 26(a)(2).~~ In addition to the disclosures required by [Rule 26\(a\)](#), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed:

(e)(3)(A)(i) any document purporting to nominate a guardian or conservator, including a will, trust, power of attorney, or advance healthcare directive, copies of which must be served upon all interested persons; and

(e)(3)(A)(ii) ~~a description~~ [a list](#) of less restrictive alternatives to guardianship or conservatorship that ~~have been explored, their applicability, and the ways the petitioner has explored and ways~~ in which a guardianship or conservatorship of the respondent may be limited.

~~This paragraph supersedes Rule 26(a)(2).~~

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

(e)(3)(C) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by any

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other party within 14 days of the date of referral to mediation unless the parties agree to a different date.

~~(e)(3)~~(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in [Rule 26\(a\)](#) in accordance with [Rule 6\(b\)](#).

~~(e)~~(4) **Initial disclosures in all other probate matters.**

~~(e)(4)~~(A) In addition to the disclosures required by [Rule 26\(a\)](#), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed: any other document purporting to nominate a personal representative or trustee after death, including wills, trusts, and any amendments to those documents, copies of which must be served upon all interested persons. This paragraph supersedes [Rule 26\(a\)\(2\)](#).

~~(e)(4)~~(B) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Titles [75](#), [75A](#), or [75B](#) of the Utah Code.

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

~~(e)(4)~~(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in [Rule 26\(a\)](#) in accordance with [Rule 6\(b\)](#).

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

(d) **Pretrial disclosures under Rule 26(a)(5).** The term “trial” in [Rule 26\(a\)\(5\)\(B\)](#) also refers to evidentiary hearings for purposes of this rule.