

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 petitioner in the matter, and the defendant is presumed to be any party who has
8 made 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 on the record will be treated as a party for
11 purposes of discovery.

12 (c)(2) **Objection to the petition.**

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

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

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

23 (c)(2)(D) The court may modify the timing for making an objection in accordance with [Rule](#)
24 [6\(b\)](#).

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

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

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

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

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

37 This paragraph supersedes [Rule 26\(a\)\(2\)](#).

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

41 (c)(3)(C) If there is a dispute regarding the validity of an original document, the proponent of
42 the original document must make it available for inspection by any other party within 14 days of
43 the date of referral to mediation unless the parties agree to a different date.

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

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

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

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

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

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

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

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

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