

1 **Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under**  
2 **Titles [75](#), [75A](#), or [75B](#) of the Utah Code.**

3 *Effective: 1/1/2020*

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

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

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

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

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

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

21 ~~(e)~~(2)(B) A written objection must set forth the grounds for the objection and any  
22 supporting authority, must be filed with the court, and must be mailed to the parties named  
23 in the petition and any “interested persons,” as that term is defined in Utah Code [section](#)<sup>§</sup>  
24 75-1-201, unless the written objection has been previously filed with the court.

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

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

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

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

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

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

38 ~~(e)(3)(A)~~(ii) a list of less restrictive alternatives to guardianship or conservatorship that  
39 the petitioner has explored and ways in which a guardianship or conservatorship of the  
40 respondent may be limited.

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

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

45 ~~(e)(3)~~(C) If there is a dispute regarding the validity of an original document, the proponent  
46 of the original document must make it available for inspection by any other party within  
47 14 days of the date of referral to mediation unless the parties agree to a different date.

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

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

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

57 ~~(e)(4)~~(B) The initial disclosure documents must be served on the parties named in the  
58 probate petition and the objection and anyone who has requested notice under [Titles 75,](#)  
59 [75A, or 75B](#) of the Utah Code.

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

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

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

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