

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 seven⁷ 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[§]
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 description](#) ~~a list~~ of less restrictive alternatives to guardianship or
39 conservatorship that [have been explored, their applicability, and the ways](#) ~~the petitioner~~
40 ~~has explored and ways~~ in which a guardianship or conservatorship of the respondent
41 may be limited.

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

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

46 ~~(e)(3)~~(C) If there is a dispute regarding the validity of an original document, the proponent
47 of the original document must make it available for inspection by any other party within
48 14 days of the date of referral to mediation unless the parties agree to a different date.

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

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

52 ~~(e)(4)~~(A) In addition to the disclosures required by [Rule 26\(a\)](#), and unless included in the
53 petition, the following documents must be served by the party in possession or control of
54 the documents within 14 days after a written objection has been filed: any other document
55 purporting to nominate a personal representative or trustee after death, including wills,

56 trusts, and any amendments to those documents, copies of which must be served upon all
57 interested persons. This paragraph supersedes [Rule 26\(a\)\(2\)](#).

58 ~~(e)(4)~~(B) The initial disclosure documents must be served on the parties named in the
59 probate petition and the objection and anyone who has requested notice under [Titles 75,](#)
60 [75A, or 75B](#) of the Utah Code.

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

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

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

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