

Utah State Courts Rules - Approved

JANUARY 2013

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The Supreme Court or Judicial Council have approved amendments to the rules. To view the amendment, click on the rule number. The amendments are effective on the dates indicated.

Some amendments have been adopted without prior comment. These are still subject to the comment period but are in effect during the comment period. To comment, click on the link to "Proposed Rule Amendments Published for Comment"

2013-04-01

Rules of Civil Procedure

URCP 005. Service and filing of pleadings and other papers. Amend. Requires a certificate of service appended to each document that has to be served. Permits the court to serve documents by email. Email to lawyers will be to the email address on file with the Utah State Bar.

URCP 010. Form of pleadings and other papers. Amend. Requires designation of the discovery tier in the caption of a claim. Requires a court-approved coversheet for counterclaims and cross claims as well as complaints.

URCP 011. Signing of pleadings, motions, affidavits, and other papers; representations to court; sanctions. Amend. Deletes a provision that conflicts with Rule 26(e). The consequence will be that the signature on disclosures, discovery requests and discovery responses is a certificate under Rule 11.

URCP 026. General provisions governing disclosure and discovery. Amend. Changes the time for initial disclosures. Provides for timing of disclosure and discovery of rebuttal experts. Clarifies that disclosure and discovery documents must be served.

URCP 026.02. Disclosures in personal injury actions. Amend. Narrows limitation on the further use of disclosures to Plaintiff's Social Security number and Medicare health insurance claim numbers. In a committee note, describes the committee's intent regarding the scope of the rule.

URCP 037. Discovery and disclosure motions; Sanctions. Amend. Allow the court to enter sanctions if a motion for a protective order or motion to compel is denied.

URCP 105. Shortening 90 day waiting period in domestic matters. Amend. Changes the standard of "good cause" to "extraordinary circumstance" keeping with Section 30-3-18.

Supreme Court Order.

2013-01-01

Code of Judicial Conduct

Applicability of this Code. Amend. Provides a definition of a full-time judge.

Supreme Court Order.

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2012-10-24

Rules of Evidence

URE 1101. Applicability of Rules. Amend. Makes URE applicable to preliminary hearings in criminal cases. Effective October 24, 2012 under Rule 11-105(5). Subject to change after the comment period. To submit a comment about this rule, [click here](#)

Supreme Court Order.

2012-11-19

Code of Judicial Administration

CJA 01-0204. Executive committees. Amend. Gives the Management Committee the authority to hear procurement protest appeals. Effective November 19, 2012 under Rule 2-205. Subject to change after the comment period. To submit a comment about this rule, [click here](#).

1 **Rule 10. Form of pleadings and other papers.**

2 (a){4} **Caption; names of parties; other necessary information.**

3 (a)(1) All pleadings and other papers filed with the court shall contain a caption
4 setting forth the name of the court, the title of the action, the file number, the name of
5 the pleading or other paper, and the name, if known, of the judge (and commissioner
6 if applicable) to whom the case is assigned. A party filing a claim for relief, whether
7 by original claim, counterclaim, cross-claim or third-party claim, shall include in the
8 caption the discovery tier for the case as determined under Rule 26.

9 (a)(2) In the complaint, the title of the action shall include the names of all the
10 parties, but other pleadings and papers need only state the name of the first party on
11 each side with an indication that there are other parties. A party whose name is not
12 known shall be designated by any name and the words "whose true name is
13 unknown." In an action in rem, unknown parties shall be designated as "all unknown
14 persons who claim any interest in the subject matter of the action."

15 (a)(3) Every pleading and other paper filed with the court shall state in the top left
16 hand corner of the first page the name, address, email address, telephone number
17 and bar number of the attorney or party filing the paper, and, if filed by an attorney,
18 the party for whom it is filed.

19 (a)(4) The plaintiff shall file together with the complaint a
20 A party filing a claim for
21 relief, whether by original claim, counterclaim, cross-claim or third-party claim, shall
22 also file a completed cover sheet substantially similar in form and content to the
23 cover sheet approved by the Judicial Council. The clerk may destroy the coversheet
24 after recording the information it contains.

25 (b) **Paragraphs; separate statements.** All statements of claim or defense shall be
26 made in numbered paragraphs. Each paragraph shall be limited as far as practicable to
27 a single set of circumstances; and a paragraph may be adopted by reference in all
28 succeeding pleadings. Each claim founded upon a separate transaction or occurrence
29 and each defense other than denials shall be stated in a separate count or defense
whenever a separation facilitates the clear presentation of the matters set forth.

30 (c) **Adoption by reference; exhibits.** Statements in a paper may be adopted by
31 reference in a different part of the same or another paper. An exhibit to a paper is a part
32 thereof for all purposes.

33 (d) **Paper format.** All pleadings and other papers, other than exhibits and court-
34 approved forms, shall be 8½ inches wide x 11 inches long, on white background, with a
35 top margin of not less than 2 inches, a right and left margin of not less than 1 inch and a
36 bottom margin of not less than one-half inch, with text or images only on one side. All
37 text or images shall be clearly legible, shall be double spaced, except for matters
38 customarily single spaced, and shall not be smaller than 12-point size.

39 (e) **Signature line.** The name of the person signing shall be typed or printed under
40 that person's signature. If a paper is electronically signed, the paper shall contain the
41 typed or printed name of the signer with or without a graphic signature.

42 (f) **Non-conforming papers.** The clerk of the court shall examine all pleadings and
43 other papers filed with the court. If they are not prepared in conformity with ~~subdivisions~~
44 paragraphs (a) – (e), the clerk shall accept the filing but may require counsel to
45 substitute properly prepared papers for nonconforming papers. The clerk or the court
46 may waive the requirements of this rule for parties appearing pro se. For good cause
47 shown, the court may relieve any party of any requirement of this rule.

48 (g) **Replacing lost pleadings or papers.** If an original pleading or paper filed in any
49 action or proceeding is lost, the court may, upon motion, with or without notice,
50 authorize a copy thereof to be filed and used in lieu of the original.

51 (h) **No improper content.** The court may strike and disregard all or any part of a
52 pleading or other paper that contains redundant, immaterial, impertinent or scandalous
53 matter.

54 (i) **Electronic papers.**

55 (i)(1) Any reference in these rules to a writing, recording or image includes the
56 electronic version thereof.

57 (i)(2) A paper electronically signed and filed is the original.

58 (i)(3) An electronic copy of a paper, recording or image may be filed as though it
59 were the original. Proof of the original, if necessary, is governed by the Utah Rules of
60 Evidence.

61 (i)(4) An electronic copy of a paper shall conform to the format of the original.

62 (i)(5) An electronically filed paper may contain links to other papers filed
63 simultaneously or already on file with the court and to electronically published
64 authority.

65 **Advisory Committee Notes**

66

1 **Rule 11. Signing of pleadings, motions, affidavits, and other papers;**
2 **representations to court; sanctions.**

3 (a) **Signature.**

4 (a)(1) Every pleading, written motion, and other paper shall be signed by at least
5 one attorney of record, or, if the party is not represented, by the party.

6 (a)(2) A person may sign a paper using any form of signature recognized by law
7 as binding. Unless required by statute, a paper need not be accompanied by
8 affidavit or have a notarized, verified or acknowledged signature. If a rule requires an
9 affidavit or a notarized, verified or acknowledged signature, the person may submit a
10 declaration pursuant to Utah Code Section 78B-5-705. If a statute requires an
11 affidavit or a notarized, verified or acknowledged signature and the party
12 electronically files the paper, the signature shall be notarized pursuant to Utah Code
13 Section 46-1-16.

14 (a)(3) An unsigned paper shall be stricken unless omission of the signature is
15 corrected promptly after being called to the attention of the attorney or party.

16 (b) **Representations to court.** By presenting a pleading, written motion, or other
17 paper to the court (whether by signing, filing, submitting, or advocating), an attorney or
18 unrepresented party is certifying that to the best of the person's knowledge, information,
19 and belief, formed after an inquiry reasonable under the circumstances,

20 (b)(1) it is not being presented for any improper purpose, such as to harass or to
21 cause unnecessary delay or needless increase in the cost of litigation;

22 (b)(2) the claims, defenses, and other legal contentions are warranted by existing
23 law or by a nonfrivolous argument for the extension, modification, or reversal of
24 existing law or the establishment of new law;

25 (b)(3) the allegations and other factual contentions have evidentiary support or, if
26 specifically so identified, are likely to have evidentiary support after a reasonable
27 opportunity for further investigation or discovery; and

28 (b)(4) the denials of factual contentions are warranted on the evidence or, if
29 specifically so identified, are reasonably based on a lack of information or belief.

30 (c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court
31 determines that subdivision (b) has been violated, the court may, subject to the
32 conditions stated below, impose an appropriate sanction upon the attorneys, law firms,
33 or parties that have violated subdivision (b) or are responsible for the violation.

34 (c)(1) **How initiated.**

35 (c)(1)(A) **By motion.** A motion for sanctions under this rule shall be made
36 separately from other motions or requests and shall describe the specific conduct
37 alleged to violate subdivision (b). It shall be served as provided in Rule 5, but
38 shall not be filed with or presented to the court unless, within 21 days after
39 service of the motion (or such other period as the court may prescribe), the
40 challenged paper, claim, defense, contention, allegation, or denial is not
41 withdrawn or appropriately corrected. If warranted, the court may award to the
42 party prevailing on the motion the reasonable expenses and attorney fees
43 incurred in presenting or opposing the motion. In appropriate circumstances, a
44 law firm may be held jointly responsible for violations committed by its partners,
45 members, and employees.

46 (c)(1)(B) **On court's initiative.** On its own initiative, the court may enter an
47 order describing the specific conduct that appears to violate subdivision (b) and
48 directing an attorney, law firm, or party to show cause why it has not violated
49 subdivision (b) with respect thereto.

50 (c)(2) **Nature of sanction; limitations.** A sanction imposed for violation of this
51 rule shall be limited to what is sufficient to deter repetition of such conduct or
52 comparable conduct by others similarly situated. Subject to the limitations in
53 subparagraphs (A) and (B), the sanction may consist of, or include, directives of a
54 nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion
55 and warranted for effective deterrence, an order directing payment to the movant of
56 some or all of the reasonable attorney fees and other expenses incurred as a direct
57 result of the violation.

58 (c)(2)(A) Monetary sanctions may not be awarded against a represented party
59 for a violation of subdivision (b)(2).

60 (c)(2)(B) Monetary sanctions may not be awarded on the court's initiative
61 unless the court issues its order to show cause before a voluntary dismissal or
62 settlement of the claims made by or against the party which is, or whose
63 attorneys are, to be sanctioned.

64 (c)(3) **Order.** When imposing sanctions, the court shall describe the conduct
65 determined to constitute a violation of this rule and explain the basis for the sanction
66 imposed.

67 ~~(d) **Inapplicability to discovery.** Subdivisions (a) through (c) of this rule do not~~
68 ~~apply to disclosures and discovery requests, responses, objections, and motions that~~
69 ~~are subject to the provisions of Rules 26 through 37.~~

70 **Advisory Committee Notes**

71

1 **Rule 26. General provisions governing disclosure and discovery.**

2 (a) **Disclosure.** This rule applies unless changed or supplemented by a rule
3 governing disclosure and discovery in a practice area.

4 (a)(1) **Initial disclosures.** Except in cases exempt under paragraph (a)(3), a
5 party shall, without waiting for a discovery request, ~~provide to~~ serve on the other
6 parties:

7 (a)(1)(A) the name and, if known, the address and telephone number of:

8 (a)(1)(A)(i) each individual likely to have discoverable information
9 supporting its claims or defenses, unless solely for impeachment, identifying
10 the subjects of the information; and

11 (a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and,
12 except for an adverse party, a summary of the expected testimony;

13 (a)(1)(B) a copy of all documents, data compilations, electronically stored
14 information, and tangible things in the possession or control of the party that the
15 party may offer in its case-in-chief, except charts, summaries and demonstrative
16 exhibits that have not yet been prepared and must be disclosed in accordance
17 with paragraph (a)(5);

18 (a)(1)(C) a computation of any damages claimed and a copy of all
19 discoverable documents or evidentiary material on which such computation is
20 based, including materials about the nature and extent of injuries suffered;

21 (a)(1)(D) a copy of any agreement under which any person may be liable to
22 satisfy part or all of a judgment or to indemnify or reimburse for payments made
23 to satisfy the judgment; and

24 (a)(1)(E) a copy of all documents to which a party refers in its pleadings.

25 (a)(2) **Timing of initial disclosures.** The disclosures required by paragraph
26 (a)(1) shall be ~~made~~ served on the other parties:

27 (a)(2)(A) by the plaintiff within 14 days after ~~service filing~~ of the first answer to
28 the complaint; and

29 (a)(2)(B) by the defendant within ~~28~~42 days after the plaintiff's first disclosure
30 filing of the first answer to the complaint or within 28 days after that defendant's
31 appearance, whichever is later.

32 (a)(3) **Exemptions.**

33 (a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties,
34 the requirements of paragraph (a)(1) do not apply to actions:

35 (a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making
36 proceedings of an administrative agency;

37 (a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

38 (a)(3)(A)(iii) to enforce an arbitration award;

39 (a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4,
40 Determination of Water Rights.

41 (a)(3)(B) In an exempt action, the matters subject to disclosure under
42 paragraph (a)(1) are subject to discovery under paragraph (b).

43 (a)(4) **Expert testimony.**

44 (a)(4)(A) **Disclosure of expert testimony.** A party shall, without waiting for a
45 discovery request, ~~provide to~~serve on the other parties the following information
46 regarding any person who may be used at trial to present evidence under Rule
47 702 of the Utah Rules of Evidence and who is retained or specially employed to
48 provide expert testimony in the case or whose duties as an employee of the party
49 regularly involve giving expert testimony: (i) the expert's name and qualifications,
50 including a list of all publications authored within the preceding 10 years, and a
51 list of any other cases in which the expert has testified as an expert at trial or by
52 deposition within the preceding four years, (ii) a brief summary of the opinions to
53 which the witness is expected to testify, (iii) all data and other information that will
54 be relied upon by the witness in forming those opinions, and (iv) the
55 compensation to be paid for the witness's study and testimony.

56 (a)(4)(B) **Limits on expert discovery.** Further discovery may be obtained
57 from an expert witness either by deposition or by written report. A deposition shall
58 not exceed four hours and the party taking the deposition shall pay the expert's

59 reasonable hourly fees for attendance at the deposition. A report shall be signed
60 by the expert and shall contain a complete statement of all opinions the expert
61 will offer at trial and the basis and reasons for them. Such an expert may not
62 testify in a party's case-in-chief concerning any matter not fairly disclosed in the
63 report. The party offering the expert shall pay the costs for the report.

64 (a)(4)(C) **Timing for expert discovery.**

65 (a)(4)(C)(i) The party who bears the burden of proof on the issue for which
66 expert testimony is offered shall ~~provide~~ serve on the other parties the
67 information required by paragraph (a)(4)(A) within seven days after the close
68 of fact discovery. Within seven days thereafter, the party opposing the expert
69 may serve notice electing either a deposition of the expert pursuant to
70 paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph
71 (a)(4)(B). The deposition shall occur, or the report shall be ~~provided~~ served on
72 the other parties, within 28 days after the election is ~~made~~ served on the other
73 parties. If no election is ~~made~~ served on the other parties, then no further
74 discovery of the expert shall be permitted.

75 (a)(4)(C)(ii) The party who does not bear the burden of proof on the issue
76 for which expert testimony is offered shall ~~provide~~ serve on the other parties
77 the information required by paragraph (a)(4)(A) within seven days after the
78 later of ~~(i) (A)~~ the date on which the election under paragraph (a)(4)(C)(i) is
79 due, or ~~(ii) (B)~~ receipt of the written report or the taking of the expert's
80 deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter,
81 the party opposing the expert may serve notice electing either a deposition of
82 the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report
83 pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall
84 be ~~provided~~ served on the other parties, within 28 days after the election is
85 ~~made~~ served on the other parties. If no election is ~~made~~ served on the other
86 parties, then no further discovery of the expert shall be permitted.

87 (a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants
88 to designate rebuttal expert witnesses it shall serve on the other parties the

89 information required by paragraph (a)(4)(A) within seven days after the later
90 of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due, or
91 (B) receipt of the written report or the taking of the expert's deposition
92 pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party
93 opposing the expert may serve notice electing either a deposition of the
94 expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report
95 pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall
96 be served on the other parties, within 28 days after the election is served on
97 the other parties. If no election is served on the other parties, then no further
98 discovery of the expert shall be permitted.

99 (a)(4)(D) **Multiparty actions.** In multiparty actions, all parties opposing the
100 expert must agree on either a report or a deposition. If all parties opposing the
101 expert do not agree, then further discovery of the expert may be obtained only by
102 deposition pursuant to paragraph (a)(4)(B) and Rule 30.

103 (a)(4)(E) **Summary of non-retained expert testimony.** If a party intends to
104 present evidence at trial under Rule 702 of the Utah Rules of Evidence from any
105 person other than an expert witness who is retained or specially employed to
106 provide testimony in the case or a person whose duties as an employee of the
107 party regularly involve giving expert testimony, that party must ~~provide~~ serve on
108 the other parties a written summary of the facts and opinions to which the
109 witness is expected to testify in accordance with the deadlines set forth in
110 paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

111 (a)(5) **Pretrial disclosures.**

112 (a)(5)(A) A party shall, without waiting for a discovery request, ~~provide to~~
113 serve on the other parties:

114 (a)(5)(A)(i) the name and, if not previously provided, the address and
115 telephone number of each witness, unless solely for impeachment, separately
116 identifying witnesses the party will call and witnesses the party may call;

117 (a)(5)(A)(ii) the name of witnesses whose testimony is expected to be
118 presented by transcript of a deposition and a copy of the transcript with the
119 proposed testimony designated; and

120 (a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and
121 demonstrative exhibits, unless solely for impeachment, separately identifying
122 those which the party will offer and those which the party may offer.

123 (a)(5)(B) Disclosure required by paragraph (a)(5) shall be ~~made~~served on the
124 other parties at least 28 days before trial. At least 14 days before trial, a party
125 shall serve and file counter designations of deposition testimony, objections and
126 grounds for the objections to the use of a deposition and to the admissibility of
127 exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of
128 Evidence, objections not listed are waived unless excused by the court for good
129 cause.

130 (b) **Discovery scope.**

131 (b)(1) **In general.** Parties may discover any matter, not privileged, which is
132 relevant to the claim or defense of any party if the discovery satisfies the standards
133 of proportionality set forth below. Privileged matters that are not discoverable or
134 admissible in any proceeding of any kind or character include all information in any
135 form provided during and created specifically as part of a request for an
136 investigation, the investigation, findings, or conclusions of peer review, care review,
137 or quality assurance processes of any organization of health care providers as
138 defined in the Utah Health Care Malpractice Act for the purpose of evaluating care
139 provided to reduce morbidity and mortality or to improve the quality of medical care,
140 or for the purpose of peer review of the ethics, competence, or professional conduct
141 of any health care provider.

142 (b)(2) **Proportionality.** Discovery and discovery requests are proportional if:

143 (b)(2)(A) the discovery is reasonable, considering the needs of the case, the
144 amount in controversy, the complexity of the case, the parties' resources, the
145 importance of the issues, and the importance of the discovery in resolving the
146 issues;

147 (b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or
148 expense;

149 (b)(2)(C) the discovery is consistent with the overall case management and
150 will further the just, speedy and inexpensive determination of the case;

151 (b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

152 (b)(2)(E) the information cannot be obtained from another source that is more
153 convenient, less burdensome or less expensive; and

154 (b)(2)(F) the party seeking discovery has not had sufficient opportunity to
155 obtain the information by discovery or otherwise, taking into account the parties'
156 relative access to the information.

157 (b)(3) **Burden.** The party seeking discovery always has the burden of showing
158 proportionality and relevance. To ensure proportionality, the court may enter orders
159 under Rule 37.

160 (b)(4) **Electronically stored information.** A party claiming that electronically
161 stored information is not reasonably accessible because of undue burden or cost
162 shall describe the source of the electronically stored information, the nature and
163 extent of the burden, the nature of the information not provided, and any other
164 information that will enable other parties to evaluate the claim.

165 (b)(5) **Trial preparation materials.** A party may obtain otherwise discoverable
166 documents and tangible things prepared in anticipation of litigation or for trial by or
167 for another party or by or for that other party's representative (including the party's
168 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that
169 the party seeking discovery has substantial need of the materials and that the party
170 is unable without undue hardship to obtain substantially equivalent materials by
171 other means. In ordering discovery of such materials, the court shall protect against
172 disclosure of the mental impressions, conclusions, opinions, or legal theories of an
173 attorney or other representative of a party.

174 (b)(6) **Statement previously made about the action.** A party may obtain without
175 the showing required in paragraph (b)(5) a statement concerning the action or its
176 subject matter previously made by that party. Upon request, a person not a party

177 may obtain without the required showing a statement about the action or its subject
178 matter previously made by that person. If the request is refused, the person may
179 move for a court order under Rule 37. A statement previously made is (A) a written
180 statement signed or approved by the person making it, or (B) a stenographic,
181 mechanical, electronic, or other recording, or a transcription thereof, which is a
182 substantially verbatim recital of an oral statement by the person making it and
183 contemporaneously recorded.

184 (b)(7) **Trial preparation; experts.**

185 (b)(7)(A) **Trial-preparation protection for draft reports or disclosures.**

186 Paragraph (b)(5) protects drafts of any report or disclosure required under
187 paragraph (a)(4), regardless of the form in which the draft is recorded.

188 (b)(7)(B) **Trial-preparation protection for communications between a
189 party's attorney and expert witnesses.** Paragraph (b)(5) protects

190 communications between the party's attorney and any witness required to
191 provide disclosures under paragraph (a)(4), regardless of the form of the
192 communications, except to the extent that the communications:

193 (b)(7)(B)(i) relate to compensation for the expert's study or testimony;

194 (b)(7)(B)(ii) identify facts or data that the party's attorney provided and that
195 the expert considered in forming the opinions to be expressed; or

196 (b)(7)(B)(iii) identify assumptions that the party's attorney provided and
197 that the expert relied on in forming the opinions to be expressed.

198 (b)(7)(C) **Expert employed only for trial preparation.** Ordinarily, a party
199 may not, by interrogatories or otherwise, discover facts known or opinions held
200 by an expert who has been retained or specially employed by another party in
201 anticipation of litigation or to prepare for trial and who is not expected to be called
202 as a witness at trial. A party may do so only:

203 (b)(7)(C)(i) as provided in Rule 35(b); or

204 (b)(7)(C)(ii) on showing exceptional circumstances under which it is
205 impracticable for the party to obtain facts or opinions on the same subject by
206 other means.

207 (b)(8) **Claims of privilege or protection of trial preparation materials.**

208 (b)(8)(A) **Information withheld.** If a party withholds discoverable information by
209 claiming that it is privileged or prepared in anticipation of litigation or for trial, the
210 party shall make the claim expressly and shall describe the nature of the documents,
211 communications, or things not produced in a manner that, without revealing the
212 information itself, will enable other parties to evaluate the claim.

213 (b)(8)(B) **Information produced.** If a party produces information that the party
214 claims is privileged or prepared in anticipation of litigation or for trial, the producing
215 party may notify any receiving party of the claim and the basis for it. After being
216 notified, a receiving party must promptly return, sequester, or destroy the specified
217 information and any copies it has and may not use or disclose the information until
218 the claim is resolved. A receiving party may promptly present the information to the
219 court under seal for a determination of the claim. If the receiving party disclosed the
220 information before being notified, it must take reasonable steps to retrieve it. The
221 producing party must preserve the information until the claim is resolved.

222 (c) **Methods, sequence and timing of discovery; tiers; limits on standard**
223 **discovery; extraordinary discovery.**

224 (c)(1) **Methods of discovery.** Parties may obtain discovery by one or more of the
225 following methods: depositions upon oral examination or written questions; written
226 interrogatories; production of documents or things or permission to enter upon land
227 or other property, for inspection and other purposes; physical and mental
228 examinations; requests for admission; and subpoenas other than for a court hearing
229 or trial.

230 (c)(2) **Sequence and timing of discovery.** Methods of discovery may be used in
231 any sequence, and the fact that a party is conducting discovery shall not delay any
232 other party's discovery. Except for cases exempt under paragraph (a)(3), a party
233 may not seek discovery from any source before that party's initial disclosure
234 obligations are satisfied.

235 (c)(3) **Definition of tiers for standard discovery.** Actions claiming \$50,000 or
236 less in damages are permitted standard discovery as described for Tier 1. Actions

237 claiming more than \$50,000 and less than \$300,000 in damages are permitted
 238 standard discovery as described for Tier 2. Actions claiming \$300,000 or more in
 239 damages are permitted standard discovery as described for Tier 3. Absent an
 240 accompanying damage claim for more than \$300,000, actions claiming non-
 241 monetary relief are permitted standard discovery as described for Tier 2.

242 (c)(4) **Definition of damages.** For purposes of determining standard discovery,
 243 the amount of damages includes the total of all monetary damages sought (without
 244 duplication for alternative theories) by all parties in all claims for relief in the original
 245 pleadings.

246 (c)(5) **Limits on standard fact discovery.** Standard fact discovery per side
 247 (plaintiffs collectively, defendants collectively, and third-party defendants collectively)
 248 in each tier is as follows. The days to complete standard fact discovery are
 249 calculated from the date the first defendant's first disclosure is due and do not
 250 include expert discovery under paragraphs(a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	\$50,000 or less	3	0	5	5	120
2	More than \$50,000 and less than \$300,000 or non-monetary relief	15	10	10	10	180
3	\$300,000 or more	30	20	20	20	210

251 (c)(6) **Extraordinary discovery.** To obtain discovery beyond the limits
252 established in paragraph (c)(5), a party shall file:

253 (c)(6)(A) before the close of standard discovery and after reaching the limits
254 of standard discovery imposed by these rules, a stipulated statement that
255 extraordinary discovery is necessary and proportional under paragraph (b)(2)
256 and that each party has reviewed and approved a discovery budget; or

257 (c)(6)(B) before the close of standard discovery and after reaching the limits
258 of standard discovery imposed by these rules, a motion for extraordinary
259 discovery setting forth the reasons why the extraordinary discovery is necessary
260 and proportional under paragraph (b)(2) and certifying that the party has
261 reviewed and approved a discovery budget and certifying that the party has in
262 good faith conferred or attempted to confer with the other party in an effort to
263 achieve a stipulation.

264 (d) **Requirements for disclosure or response; disclosure or response by an**
265 **organization; failure to disclose; initial and supplemental disclosures and**
266 **responses.**

267 (d)(1) A party shall make disclosures and responses to discovery based on the
268 information then known or reasonably available to the party.

269 (d)(2) If the party providing disclosure or responding to discovery is a corporation,
270 partnership, association, or governmental agency, the party shall act through one or
271 more officers, directors, managing agents, or other persons, who shall make
272 disclosures and responses to discovery based on the information then known or
273 reasonably available to the party.

274 (d)(3) A party is not excused from making disclosures or responses because the
275 party has not completed investigating the case or because the party challenges the
276 sufficiency of another party's disclosures or responses or because another party has
277 not made disclosures or responses.

278 (d)(4) If a party fails to disclose or to supplement timely a disclosure or response
279 to discovery, that party may not use the undisclosed witness, document or material

280 at any hearing or trial unless the failure is harmless or the party shows good cause
281 for the failure.

282 (d)(5) If a party learns that a disclosure or response is incomplete or incorrect in
283 some important way, the party must timely ~~provide~~ serve on the other parties the
284 additional or correct information if it has not been made known to the other parties.
285 The supplemental disclosure or response must state why the additional or correct
286 information was not previously provided.

287 (e) **Signing discovery requests, responses, and objections.** Every disclosure,
288 request for discovery, response to a request for discovery and objection to a request for
289 discovery shall be in writing and signed by at least one attorney of record or by the party
290 if the party is not represented. The signature of the attorney or party is a certification
291 under Rule 11. If a request or response is not signed, the receiving party does not need
292 to take any action with respect to it. If a certification is made in violation of the rule, the
293 court, upon motion or upon its own initiative, may take any action authorized by Rule 11
294 or Rule 37(e).

295 (f) **Filing.** Except as required by these rules or ordered by the court, a party shall not
296 file with the court a disclosure, a request for discovery or a response to a request for
297 discovery, but shall file only the certificate of service stating that the disclosure, request
298 for discovery or response has been served on the other parties and the date of service.

299 Advisory Committee Notes

300 Legislative Note

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