SJR004S02 compared with SJR004S01

{Omitted text} shows text that was in SJR004S01 but was omitted in SJR004S02
inserted text shows text that was not in SJR004S01 but was inserted into SJR004S02

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1 **Joint Resolution Amending Court Rules {of Procedure and Evidence} on Attorney Confidentiality**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor:

2

3 **LONG TITLE**

4 **General Description:**

5 This joint resolution amends court rules {of procedure and evidence} regarding attorney confidentiality.

6 **Highlighted Provisions:**

7 This resolution:

8 ▸ {**amends Rule 11 of the Utah Rules of Criminal Procedure to address the withdrawal of a plea;**}

10 ▸ amends Rule 26 of the Utah Rules of Civil Procedure to address the work-product doctrine with regard to a legislative audit; and

12 ▸ {**amends Rule 504 of the Utah Rules of Evidence to address the attorney-client privilege with regard to a legislative audit; and**}

14 ▸ amends Rule 510 of the Utah Rules of Evidence to address the waiver of the attorney-client privilege with regard to a legislative audit.

12 **Other Special Clauses:**

SJR004S01

13 This resolution provides a special effective date.

14 **Utah Rules of Civil Procedure Affected:**

15 AMENDS:

26 ~~{Rule 504 , Utah Rules of Evidence , Utah Rules of Evidence}~~

23 ~~{Rule 11 , Utah Rules of Criminal Procedure , Utah Rules of Criminal Procedure}~~

16 **Rule 26** , Utah Rules of Civil Procedure , Utah Rules of Civil Procedure

17 **Utah Rules of Evidence Affected:**

18 AMENDS:

19 **Rule 510** , Utah Rules of Evidence , Utah Rules of Evidence

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21 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*

22 *of the two houses voting in favor thereof:*

23 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of

24 procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all

25 members of both houses of the Legislature:

455 Section 3. **Rule 504,** Utah Rules of Evidence is amended to read:

456 **Rule 504. Legal Professional - Client.**

(a) Definitions.

[~~(a)~~]**(1)** "Legal services" means the provision of:

[~~(a)(1)~~]**(A)** professional counsel, advice, direction or guidance on a legal matter or question;

[~~(a)(1)~~]**(B)** professional representation on the client's behalf on a legal matter; or

[~~(a)(1)~~]**(C)** referral to a legal professional.

[~~(a)~~]**(2)** "Client" means a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered legal services.

[~~(a)~~]**(3)** "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

[~~(a)~~]**(4)** "Legal professional" means a lawyer or any other person or entity authorized, or reasonably believed by the client to be authorized, in the State of Utah to provide legal services.

[~~(a)~~]**(5)** "Legal Professional referral service" means an organization, either non-profit or

for-profit, that provides intake or screening services to clients or prospective clients for legal services.

[~~(a)~~](6) "Legal professional's representative" means a person or entity employed to assist the legal professional in the rendition of legal services.

[~~(a)~~](7) "Client's representative" means a person or entity authorized by the client to:

[~~(a)(7)~~](A) obtain legal services for or on behalf of the client;

[~~(a)(7)~~](B) act on advice rendered pursuant to legal services for or on behalf of the client;

[~~(a)(7)~~](C) provide assistance to the client that is reasonably necessary to facilitate the client's confidential communications; or

[~~(a)(7)~~](D) disclose, as an employee or agent of the client, confidential information concerning a legal matter to the legal professional.

[~~(a)~~](8) "Communication" includes:

[~~(a)(8)~~](A) advice, direction or guidance given by the legal professional the legal professional's representative, or a lawyer referral service in the course of providing legal services; and

[~~(a)(8)~~](B) disclosures of the client and the client's representative to the legal professional the legal professional's representative, or a lawyer referral service incidental to the client's legal services.

[~~(a)~~](9) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of legal services to the client or to those reasonably necessary for the transmission of the communication.

(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications if:

[~~(b)~~](1) the communications were made for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client; and

[~~(b)~~](2) the communications were:

[~~(b)(2)~~](A) between (i) the client or the client's representative and (ii) the legal professional, the legal professional's representatives, or a legal professional representing others in matters of common interest;

[(b)(2)](B) between clients or clients' representatives as to matters of common interest but only if each clients' legal professional or legal professional's representatives was also present or included in the communications;

[(b)(2)](C) between (i) the client or the client's representatives and (ii) a legal professional referral service; or

[(b)(2)](D) between (i) the client's legal professional or legal professional's representatives and (ii) a legal professional referral service.

(c) Who May Claim the Privilege. The privilege may be claimed by:

[(c)](1) the client;

[(c)](2) the client's guardian or conservator;

[(c)](3) the personal representative of a client who is deceased;

[(c)](4) the successor, trustee, or similar representative of a client that was a corporation, association, or other organization, whether or not in existence; and

[(c)](5) the legal professional or the lawyer referral service on behalf of the client.

(d) Exceptions to the Privilege. [Privilege does not apply in the following circumstances] The privilege does not apply:

[**(d)(1) Furtherance of the Crime or Fraud.** If] **(1)** if the services of the legal professional were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

[**(d)(2) Claimants through Same Deceased Client.** As] **(2)** as to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

[**(d)(3) Breach of Duty by Legal Professional or Client.** As] **(3)** as to a communication relevant to an issue of breach of duty by the legal professional to the client;

[**(d)(4) Document Attested by Legal Professional.** As] **(4)** as to a communication relevant to an issue concerning a document to which the legal professional was an attesting witness;[or

(d)(5) Joint Clients. As] **(5)** to the communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a legal professional retained or consulted in common, when offered in an action between any of the clients[.]; or

(6) to the legislative auditor general or an arbitrator if the client is subject to an audit by the legislative auditor general under Utah Constitution, Article VI, Section 33, and the communication is disclosed to the legislative auditor general or the arbitrator as described in Utah Code section 36-12-15.

34 Section 1. **Rule 11,** Utah Rules of Criminal Procedure is amended to read:

35 **Rule 11. Pleas.**

(a) **Right to Counsel.** Upon arraignment, except for an infraction, a defendant must be represented by counsel, unless the defendant waives counsel in open court. The defendant must not be required to plead until the defendant has had a reasonable time to confer with counsel.

(b) **Types of pleas.** A defendant may plead not guilty, guilty, no contest, not guilty by reason of insanity, or guilty [~~and mentally ill~~] with a mental condition at the time of the offense. A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to appear, the court will enter a plea of not guilty.

(c) **No contest plea.** A defendant may plead no contest only with the consent of the court.

(d) **Not guilty plea.** When a defendant enters a plea of not guilty, the case will be set for trial. A defendant unable to make bail must be given a preference for an early trial. In cases other than felonies the court will advise the defendant, or counsel, of the requirements for making a written demand for a jury trial.

(e) **Guilty plea.** The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

[~~(e)~~](1) if the defendant is not represented by counsel, [~~he or she~~] the defendant has knowingly waived the right to counsel and does not desire counsel;

[~~(e)~~](2) the plea is voluntarily made;

[~~(e)~~](3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

[~~(e)~~](4)(A) the defendant understands the nature and elements of the offense to which

the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements; and

[(e)(4)](B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged crime was actually committed by the defendant or, if the defendant refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk of conviction;

[(e)](5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

[(e)](6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

[(e)](7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and

[(e)](8) the defendant has been advised that the right of appeal is limited.

These findings may be based on questioning of the defendant on the record or, if used, a written statement reciting these factors after the court has established that the defendant has read, understood, and acknowledged the contents of the statement. If the defendant cannot understand the English language, it will be sufficient that the statement has been read or translated to the defendant.

Unless specifically required by statute or rule, a court is not required to inquire into or advise concerning any collateral consequences of a plea.

(f) **Motion to withdraw plea.** [~~Failure to advise the defendant of the time limits for filing any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground for setting the plea aside, but may be the ground for extending the time to make a motion under Utah Code § 77-13-6.~~]

(1) A defendant may only withdraw from a plea as described in Utah Code section

89 77-13-6.

(2) A defendant must make a motion to withdraw a plea of guilty, no contest, or guilty with a mental condition at the time of the offense before the sentence is announced. The court

may not announce the defendant's sentence unless the motion to withdraw the plea is denied.
(3) A defendant must make a motion to withdraw a plea in abeyance within 30 days after the day on which the defendant enters a plea of guilty or no contest.
(4) If a motion to withdraw a plea of guilty, no contest, or guilty with a mental condition at the time of the offense is not made within the time period described in this paragraph (f), the defendant must bring any challenge to the plea in accordance with Utah Code Title 78B, Chapter 9, Postconviction Remedies Act, and Rule 65C of the Utah Rules of Civil Procedure.
(g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or guilty [and mentally ill] with a mental condition at the time of the offense to a misdemeanor crime of domestic violence, as defined in Utah Code [§] section 77-36-1, the court will advise the defendant orally or in writing that, if the case meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code [§] section 76-10-503 then pursuant to federal law or state law, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.
(h) **Plea recommendations.**
[(h)](1) If it appears that the prosecuting attorney or any other party has agreed to request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of other charges, the agreement must be approved or rejected by the court.
[(h)](2) If sentencing recommendations are allowed by the court, the court will advise the defendant personally that any recommendation as to sentence is not binding on the court.
(i) **Plea agreements.**
[(i)](1) The judge will not participate in plea discussions prior to any plea agreement being made by the prosecuting attorney.
[(i)](2) When a tentative plea agreement has been reached, the judge, upon request of the parties, may permit the disclosure of the tentative agreement and the reasons for it, in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the proposed disposition will be approved.
[(i)](3) If the judge then decides that final disposition should not be in conformity with the plea agreement, the judge must advise the parties as to the nature of the divergence from the plea agreement and then call upon the parties to either affirm or withdraw from the plea agreement.

(j) **Conditional plea.** With approval of the court and the consent of the prosecution, a defendant may enter a conditional plea of guilty, guilty [~~and mentally ill~~]with a mental condition at the time of the offense, or no contest, reserving in the record the right, on appeal from the judgment, to a review of the adverse determination of any specified pre-trial motion. A defendant who prevails on appeal will be allowed to withdraw the plea.

(k) **Guilty [~~and mentally ill~~] with a mental condition at the time of the offense.** When a defendant tenders a plea of guilty [~~and mentally ill~~]with a mental condition at the time of the offense, in addition to the other requirements of this rule, the court will hold a hearing within a reasonable time to determine if the defendant [~~is mentally ill~~]had a mental condition at the time of the offense in accordance with Utah Code [~~§~~] section 77-16a-103.

(l) **Strict compliance not necessary.** Compliance with this rule will be determined by examining the record as a whole. Any variance from procedures required by this rule which does not affect substantial rights will be disregarded. Failure to comply with this rule is not, by itself, sufficient grounds for a collateral attack on a guilty plea.

26 Section 2. **Rule 26,** Utah Rules of Civil Procedure is amended to read:

27 **Rule 26. General provisions governing disclosure of discovery.**

This rule applies unless changed or supplemented by a rule governing disclosure and discovery in a practice area.

Except in cases exempt under paragraph (a)(3), a party must, without waiting for a discovery request, serve on the other parties:

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

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

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

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

(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the

nature and extent of injuries suffered;
(D) a copy of any agreement under which any person may be liable to satisfy part or
all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and
(E) a copy of all documents to which a party refers in its pleadings.
The disclosures required by paragraph (a)(1) must be
served on the other parties:
(A) by a plaintiff within 14 days after the filing of the first answer to that plaintiff's
complaint; and
(B) by a defendant within 42 days after the filing of that defendant's first answer to
the complaint.
(A) Unless otherwise ordered by the court or agreed to by the parties, the
requirements of paragraph (a)(1) do not apply to actions:
(i) for judicial review of adjudicative proceedings or rule making proceedings of
an administrative agency;
(ii) governed by Rule 65B or Rule 65C;
(iii) to enforce an arbitration award; or
(iv) for water rights general adjudication under Utah Code Title 73, Chapter 4,
Determination of Water Rights.
(B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are
subject to discovery under paragraph (b).
A party must, without waiting for a
discovery request, serve on the other parties the following information regarding any person
who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence
and who is retained or specially employed to provide expert testimony in the case or whose
duties as an employee of the party regularly involve giving expert testimony: (i) the expert's
name and qualifications, including a list of all publications authored within the preceding 10
years, and a list of any other cases in which the expert has testified as an expert at trial or by
deposition within the preceding four years, (ii) a brief summary of the opinions to which the
witness is expected to testify, (iii) the facts, data, and other information specific to the case that
will be relied upon by the witness in forming those opinions, and (iv) the compensation to be
paid for the witness's study and testimony.

Further discovery may be obtained from an expert
witness either by deposition or by written report. A deposition must not exceed four hours and the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition. A report must be signed by the expert and must contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert must pay the costs for the report.
(i) The party who bears the burden of proof on the issue for which expert
testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the close of fact discovery. Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert must be permitted.
(ii) The party who does not bear the burden of proof on the issue for which expert
testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert must be permitted.
(iii) If the party who bears the burden of proof on an issue wants to designate
rebuttal expert witnesses, it must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph

(a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert must be permitted. The court may preclude an expert disclosed only as a rebuttal expert from testifying in the case in chief.

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

If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such a witness cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such a witness may not exceed four hours and, unless manifest injustice would result, the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition.

(A) A party must, without waiting for a discovery request, serve on the other parties:

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

(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition;

(iii) designations of the proposed deposition testimony; and

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

(B) Disclosure required by paragraph (a)(5)(A) must be served on the other parties at least 28 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and (a)(5)(A)(ii) must

also be filed on the date that they are served. At least 14 days before trial, a party must serve any counter designations of deposition testimony and any objections and grounds for the objections to the use of any deposition, witness, or exhibit if the grounds for the objection are apparent before trial. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, other objections not listed are waived unless excused by the court for good cause. Rule 34 governs the form in which all
documents, data compilations, electronically stored information, tangible things, and evidentiary material should be produced under this Rule.
Parties may discover any matter, not privileged, which is relevant to the
claim or defense of any party if the discovery satisfies the standards of proportionality set forth below.
(A) Privileged matters that are not discoverable or admissible in any proceeding of
any kind or character include:
(i) all information in any form provided during and created specifically as part of a
request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in Utah Code Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider; and
(ii) except as provided in paragraph (b)(2)(C), (D), or (E), all communications,
materials, and information in any form specifically created for or during a medical candor process under Utah Code Title 78B, Chapter 3, Part 4a, Utah Medical Candor Act, including any findings or conclusions from the investigation and any offer of compensation.
(B) Disclosure or use in a medical candor process of any communication, material,
or information in any form that contains any information described in paragraph (b)(2)(A)(i) does not waive any privilege or protection against admissibility or discovery of the information under paragraph (b)(2)(A)(i).
(C) Any communication, material, or information in any form that is made or
provided in the ordinary course of business, including a medical record or a business record, that is otherwise discoverable or admissible and is not created for or during a medical candor

process is not privileged by the use or disclosure of the communication, material, or information during a medical candor process.
(D) (i) Any information that is required to be documented in a patient's medical record under state or federal law is not privileged by the use or disclosure of the information during a medical candor process.
(ii) Information described in paragraph (b)(2)(D)(i) does not include an individual's mental impressions, conclusions, or opinions that are formed outside the course and scope of the patient's care and treatment and are used or disclosed in a medical candor process.
(E) (i) Any communication, material, or information in any form that is provided to an affected party before the affected party's written agreement to participate in a medical candor process is not privileged by the use or disclosure of the communication, material, or information during a medical candor process.
(ii) Any communication, material, or information described in paragraph (b)(2)(E)(i) does not include a written notice described in Utah Code section 78B-3-452.
(F) The terms defined in Utah Code section 78B-3-450 apply to paragraphs (b)(2)(A)(ii), (B), (C), (D), and (E).
(G) Nothing in this paragraph (b)(2) shall prevent a party from raising any other privileges provided by law or rule as to the admissibility or discovery of any communication, information, or material described in paragraph (b)(2)(A), (B), (C), (D), or (E).
Discovery and discovery requests are proportional if:
(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;
(B) the likely benefits of the proposed discovery outweigh the burden or expense;
(C) the discovery is consistent with the overall case management and will further the just, speedy, and inexpensive determination of the case;
(D) the discovery is not unreasonably cumulative or duplicative;
(E) the information cannot be obtained from another source that is more convenient, less burdensome, or less expensive; and
(F) the party seeking discovery has not had sufficient opportunity to obtain the

information by discovery or otherwise, taking into account the parties' relative access to the information.

The party seeking discovery always has the burden of showing
proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

A party claiming that electronically stored
information is not reasonably accessible because of undue burden or cost must describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

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

A party may obtain without the
showing required in paragraph(b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is: (A) a written statement signed or approved by the person making it[,]; or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Paragraph (b)(6)
protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

Paragraph (b)(6) protects communications between the party's attorney and

any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

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

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

Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(i) as provided in Rule 35(b); or

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

If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

If a party is an entity that is subject to an audit by the legislative auditor general under Utah Constitution, Article VI, Section 33, and information that is privileged or prepared in anticipation of litigation or for trial is disclosed to the legislative auditor general or an arbitrator as described in Utah Code section 36-12-15, the

disclosure to the legislative auditor general or the arbitrator does not make the information discoverable or prevent the party from claiming that the information is privileged and prepared in anticipation of litigation or for trial.

Parties may obtain discovery by one or more of the
following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and subpoenas other than for a court hearing or trial.

Methods of discovery may be used in any
sequence, and the fact that a party is conducting discovery must not delay any other party's discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

Actions claiming $50,000 or less in
damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2. Domestic relations actions are permitted standard discovery as described for Tier 4.

For purposes of determining standard discovery, the amount
of damages includes the total of all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.

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

To obtain discovery beyond the limits established in
paragraph (c)(5), a party must:

(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, file a stipulated statement that extraordinary discovery is

necessary and proportional under paragraph (b)(2) and, for each party represented by an attorney, a statement that the attorney consulted with the client about the request for extraordinary discovery;

(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, file a request for extraordinary discovery under Rule 37(a); or

(C) obtain an expanded discovery schedule under Rule 100A.

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

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

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

(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document, or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.

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

Every disclosure, request for
discovery, response to a request for discovery, and objection to a request for discovery must be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

Except as required by these rules or ordered by the court, a party must not file
with the court a disclosure, a request for discovery, or a response to a request for discovery,
but must file only the certificate of service stating that the disclosure, request for discovery, or
response has been served on the other parties and the date of service.

344 Section 4. **Rule 510,** Utah Rules of Evidence is amended to read:

345 **Rule 510. Miscellaneous Matters.**

[A]Except as provided in paragraph (a)(2) or (a)(3), a person who holds a privilege
under these rules waives the privilege if the person or a previous holder of the privilege:
voluntarily discloses or consents to the disclosure of any significant part
of the matter or communication[,]; or
fails to take reasonable precautions against inadvertent disclosure.

[This]The privilege is not waived if the disclosure is itself a privileged
communication.

If a party is an entity that is subject to an audit by the legislative auditor general
under Utah Constitution, Article VI, Section 33, and information that is privileged under Rule
504 is disclosed to the legislative auditor general or an arbitrator as described in Utah Code
{ The } section 36-12-15, the disclosure {of a communication under Rule 504(d)(6) } to the
legislative auditor general or the arbitrator does not
{general or an arbitrator does not } waive the privilege under paragraph (a)(1) {to any other
person } .
{or entity.}

Evidence of a statement or other disclosure of
privileged matter is not admissible against the holder of the privilege if disclosure was
compelled erroneously or made without opportunity to claim the privilege.

The claim of privilege, whether in the present
proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel.
No inference may be drawn from any claim of privilege.

To the extent practicable, jury cases
{jury’s } jury's knowledge.

Upon request, any party against whom the jury might draw an adverse
inference from the claim of privilege is entitled to a jury instruction that no inference may be

drawn from that claim of privilege.

In a civil case, the provisions of [

paragraph (c)-(e)]paragraphs (c) through (e) do not apply when the privilege against

self-incrimination has been invoked.

373 Section 5. **Effective date.**

{As } (1) Except as provided in {Utah Constitution, Article VIII} Subsection (2), {Section 4, } this resolution takes effect on May 7, 2025.

{upon a two-thirds vote of all members elected to each house.}

(2) If S.B. 154, Legislative Audit Amendments, does not pass and become law, this resolution does not take effect.