Brady Brammer proposes the following substitute bill:

1 # Joint Resolution Amending Court Rules of Procedure and Evidence

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.

6 **Highlighted Provisions:**

7 This resolution:

8 ▸ amends Rule 11 of the Utah Rules of Criminal Procedure to address the withdrawal of a

9 plea;

10 ▸ amends Rule 26 of the Utah Rules of Civil Procedure to address the work-product

11 doctrine with regard to a legislative audit;

12 ▸ amends Rule 504 of the Utah Rules of Evidence to address the attorney-client privilege

13 with regard to a legislative audit; and

14 ▸ amends Rule 510 of the Utah Rules of Evidence to address the waiver of the

15 attorney-client privilege with regard to a legislative audit.

16 **Other Special Clauses:**

17 This resolution provides a special effective date.

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

19 AMENDS:

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

21 **Utah Rules of Criminal Procedure Affected:**

22 AMENDS:

23 **Rule 11**, Utah Rules of Criminal Procedure

24 **Utah Rules of Evidence Affected:**

25 AMENDS:

26 **Rule 504**, Utah Rules of Evidence

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

28

29 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
30 *of the two houses voting in favor thereof:*
31 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of
32 procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all
33 members of both houses of the Legislature:
34 Section 1. **Rule 11,** Utah Rules of Criminal Procedure is amended to read:
35 **Rule 11 . Pleas.**
36 (a) **Right to Counsel.** Upon arraignment, except for an infraction, a defendant must be
37 represented by counsel, unless the defendant waives counsel in open court. The defendant
38 must not be required to plead until the defendant has had a reasonable time to confer with
39 counsel.
40 (b) **Types of pleas.** A defendant may plead not guilty, guilty, no contest, not guilty by
41 reason of insanity, or guilty [~~and mentally ill~~] with a mental condition at the time of the offense.
42 A defendant may plead in the alternative not guilty or not guilty by reason of insanity. If a
43 defendant refuses to plead or if a defendant corporation fails to appear, the court will enter a
44 plea of not guilty.
45 (c) **No contest plea.** A defendant may plead no contest only with the consent of the court.
46 (d) **Not guilty plea.** When a defendant enters a plea of not guilty, the case will be set for
47 trial. A defendant unable to make bail must be given a preference for an early trial. In cases
48 other than felonies the court will advise the defendant, or counsel, of the requirements for
49 making a written demand for a jury trial.
50 (e) **Guilty plea.** The court may refuse to accept a plea of guilty, no contest or guilty and
51 mentally ill, and may not accept the plea until the court has found:
52 [~~(e)~~](1) if the defendant is not represented by counsel, [~~he or she~~] the defendant has
53 knowingly waived the right to counsel and does not desire counsel;
54 [~~(e)~~](2) the plea is voluntarily made;
55 [~~(e)~~](3) the defendant knows of the right to the presumption of innocence, the right
56 against compulsory self-incrimination, the right to a speedy public trial before an impartial
57 jury, the right to confront and cross-examine in open court the prosecution witnesses, the right
58 to compel the attendance of defense witnesses, and that by entering the plea, these rights are
59 waived;
60 [~~(e)~~](4)(A) the defendant understands the nature and elements of the offense to which
61 the plea is entered, that upon trial the prosecution would have the burden of proving each of
62 those elements beyond a reasonable doubt, and that the plea is an admission of all those

63 elements; and
64 [~~(e)(4)~~](B) there is a factual basis for the plea. A factual basis is sufficient if it
65 establishes that the charged crime was actually committed by the defendant or, if the defendant
66 refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence
67 to establish a substantial risk of conviction;
68 [~~(e)~~](5) the defendant knows the minimum and maximum sentence, and if applicable,
69 the minimum mandatory nature of the minimum sentence, that may be imposed for each
70 offense to which a plea is entered, including the possibility of the imposition of consecutive
71 sentences;
72 [~~(e)~~](6) if the tendered plea is a result of a prior plea discussion and plea agreement, and
73 if so, what agreement has been reached;
74 [~~(e)~~](7) the defendant has been advised of the time limits for filing any motion to
75 withdraw the plea; and
76 [~~(e)~~](8) the defendant has been advised that the right of appeal is limited.
77 These findings may be based on questioning of the defendant on the record or, if used, a
78 written statement reciting these factors after the court has established that the defendant has
79 read, understood, and acknowledged the contents of the statement. If the defendant cannot
80 understand the English language, it will be sufficient that the statement has been read or
81 translated to the defendant.
82 Unless specifically required by statute or rule, a court is not required to inquire into or
83 advise concerning any collateral consequences of a plea.
84 (f) **Motion to withdraw plea.** [~~Failure to advise the defendant of the time limits for filing~~
85 ~~any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground~~
86 ~~for setting the plea aside, but may be the ground for extending the time to make a motion~~
87 ~~under Utah Code § 77-13-6.~~]
88 (1) A defendant may only withdraw from a plea as described in Utah Code section
89 77-13-6.
90 (2) A defendant must make a motion to withdraw a plea of guilty, no contest, or guilty
91 with a mental condition at the time of the offense before the sentence is announced. The court
92 may not announce the defendant's sentence unless the motion to withdraw the plea is denied.
93 (3) A defendant must make a motion to withdraw a plea in abeyance within 30 days after
94 the day on which the defendant enters a plea of guilty or no contest.
95 (4) If a motion to withdraw a plea of guilty, no contest, or guilty with a mental condition
96 at the time of the offense is not made within the time period described in this paragraph (f), the

97 defendant must bring any challenge to the plea in accordance with Utah Code Title 78B,
98 Chapter 9, Postconviction Remedies Act, and Rule 65C of the Utah Rules of Civil Procedure.
99 (g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or guilty [
100 ~~and mentally ill~~] with a mental condition at the time of the offense to a misdemeanor crime of
101 domestic violence, as defined in Utah Code [~~§~~] section 77-36-1, the court will advise the
102 defendant orally or in writing that, if the case meets the criteria of 18 U.S.C. § 921(a)(33) or
103 Utah Code [~~§~~] section 76-10-503 then pursuant to federal law or state law, it is unlawful for the
104 defendant to possess, receive or transport any firearm or ammunition. The failure to advise
105 does not render the plea invalid or form the basis for withdrawal of the plea.
106 (h) **Plea recommendations.**
107 [~~(h)~~](1) If it appears that the prosecuting attorney or any other party has agreed to
108 request or recommend the acceptance of a plea to a lesser included offense, or the dismissal of
109 other charges, the agreement must be approved or rejected by the court.
110 [~~(h)~~](2) If sentencing recommendations are allowed by the court, the court will advise
111 the defendant personally that any recommendation as to sentence is not binding on the court.
112 (i) **Plea agreements.**
113 [~~(i)~~](1) The judge will not participate in plea discussions prior to any plea agreement
114 being made by the prosecuting attorney.
115 [~~(i)~~](2) When a tentative plea agreement has been reached, the judge, upon request of the
116 parties, may permit the disclosure of the tentative agreement and the reasons for it, in advance
117 of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and
118 defense counsel whether the proposed disposition will be approved.
119 [~~(i)~~](3) If the judge then decides that final disposition should not be in conformity with
120 the plea agreement, the judge must advise the parties as to the nature of the divergence from
121 the plea agreement and then call upon the parties to either affirm or withdraw from the plea
122 agreement.
123 (j) **Conditional plea.** With approval of the court and the consent of the prosecution, a
124 defendant may enter a conditional plea of guilty, guilty [~~and mentally ill~~] with a mental
125 condition at the time of the offense, or no contest, reserving in the record the right, on appeal
126 from the judgment, to a review of the adverse determination of any specified pre-trial motion.
127 A defendant who prevails on appeal will be allowed to withdraw the plea.
128 (k) **Guilty [~~and mentally ill~~] with a mental condition at the time of the offense.** When a
129 defendant tenders a plea of guilty [~~and mentally ill~~] with a mental condition at the time of the
130 offense, in addition to the other requirements of this rule, the court will hold a hearing within a

131 reasonable time to determine if the defendant [~~is mentally ill~~] had a mental condition at the
132 time of the offense in accordance with Utah Code [§] section 77-16a-103.
133 (l) **Strict compliance not necessary.** Compliance with this rule will be determined by
134 examining the record as a whole. Any variance from procedures required by this rule which
135 does not affect substantial rights will be disregarded. Failure to comply with this rule is not, by
136 itself, sufficient grounds for a collateral attack on a guilty plea.
137 Section 2. **Rule 26,** Utah Rules of Civil Procedure is amended to read:
138 **Rule 26 . General provisions governing disclosure of discovery.**
139 **(a) Disclosure.** This rule applies unless changed or supplemented by a rule governing
140 disclosure and discovery in a practice area.
141 **(1) Initial disclosures.** Except in cases exempt under paragraph (a)(3), a party must,
142 without waiting for a discovery request, serve on the other parties:
143 (A) the name and, if known, the address and telephone number of:
144 (i) each individual likely to have discoverable information supporting its claims
145 or defenses, unless solely for impeachment, identifying the subjects of the information; and
146 (ii) each fact witness the party may call in its case-in-chief and, except for an
147 adverse party, a summary of the expected testimony;
148 (B) a copy of all documents, data compilations, electronically stored information,
149 and tangible things in the possession or control of the party that the party may offer in its
150 case-in-chief, except charts, summaries, and demonstrative exhibits that have not yet been
151 prepared and must be disclosed in accordance with paragraph (a)(5);
152 (C) a computation of any damages claimed and a copy of all discoverable documents
153 or evidentiary material on which such computation is based, including materials about the
154 nature and extent of injuries suffered;
155 (D) a copy of any agreement under which any person may be liable to satisfy part or
156 all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and
157 (E) a copy of all documents to which a party refers in its pleadings.
158 **(2) Timing of initial disclosures.** The disclosures required by paragraph (a)(1) must be
159 served on the other parties:
160 (A) by a plaintiff within 14 days after the filing of the first answer to that plaintiff's
161 complaint; and
162 (B) by a defendant within 42 days after the filing of that defendant's first answer to
163 the complaint.
164 **(3) Exemptions.**

165 (A) Unless otherwise ordered by the court or agreed to by the parties, the
166 requirements of paragraph (a)(1) do not apply to actions:
167 (i) for judicial review of adjudicative proceedings or rule making proceedings of
168 an administrative agency;
169 (ii) governed by Rule 65B or Rule 65C;
170 (iii) to enforce an arbitration award; or
171 (iv) for water rights general adjudication under Utah Code Title 73, Chapter 4,
172 Determination of Water Rights.
173 (B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are
174 subject to discovery under paragraph (b).
175 **(4) Expert testimony.**
176 **(A) Disclosure of retained expert testimony.** A party must, without waiting for a
177 discovery request, serve on the other parties the following information regarding any person
178 who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence
179 and who is retained or specially employed to provide expert testimony in the case or whose
180 duties as an employee of the party regularly involve giving expert testimony: (i) the expert's
181 name and qualifications, including a list of all publications authored within the preceding 10
182 years, and a list of any other cases in which the expert has testified as an expert at trial or by
183 deposition within the preceding four years, (ii) a brief summary of the opinions to which the
184 witness is expected to testify, (iii) the facts, data, and other information specific to the case that
185 will be relied upon by the witness in forming those opinions, and (iv) the compensation to be
186 paid for the witness's study and testimony.
187 **(B) Limits on expert discovery.** Further discovery may be obtained from an expert
188 witness either by deposition or by written report. A deposition must not exceed four hours and
189 the party taking the deposition must pay the expert's reasonable hourly fees for attendance at
190 the deposition. A report must be signed by the expert and must contain a complete statement of
191 all opinions the expert will offer at trial and the basis and reasons for them. Such an expert
192 may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the
193 report. The party offering the expert must pay the costs for the report.
194 **(C) Timing for expert discovery.**
195 (i) The party who bears the burden of proof on the issue for which expert
196 testimony is offered must serve on the other parties the information required by paragraph
197 (a)(4)(A) within 14 days after the close of fact discovery. Within 14 days thereafter, the party
198 opposing the expert may serve notice electing either a deposition of the expert pursuant to

199 paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The
200 deposition must occur, or the report must be served on the other parties, within 42 days after
201 the election is served on the other parties. If no election is served on the other parties, then no
202 further discovery of the expert must be permitted.
203 (ii) The party who does not bear the burden of proof on the issue for which expert
204 testimony is offered must serve on the other parties the information required by paragraph
205 (a)(4)(A) within 14 days after the later of (A) the date on which the disclosure under paragraph
206 (a)(4)(C)(i) is due, or (B) service of the written report or the taking of the expert's deposition
207 pursuant to paragraph (a)(4)(C)(i). Within 14 days thereafter, the party opposing the expert
208 may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and
209 Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the
210 report must be served on the other parties, within 42 days after the election is served on the
211 other parties. If no election is served on the other parties, then no further discovery of the
212 expert must be permitted.
213 (iii) If the party who bears the burden of proof on an issue wants to designate
214 rebuttal expert witnesses, it must serve on the other parties the information required by
215 paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the election under
216 paragraph (a)(4)(C)(ii) is due or (B) service of the written report or the taking of the expert's
217 deposition pursuant to paragraph (a)(4)(C)(ii). Within 14 days thereafter, the party opposing
218 the expert may serve notice electing either a deposition of the expert pursuant to paragraph
219 (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must
220 occur, or the report must be served on the other parties, within 42 days after the election is
221 served on the other parties. If no election is served on the other parties, then no further
222 discovery of the expert must be permitted. The court may preclude an expert disclosed only as
223 a rebuttal expert from testifying in the case in chief.
224 **(D) Multiparty actions.** In multiparty actions, all parties opposing the expert must
225 agree on either a report or a deposition. If all parties opposing the expert do not agree, then
226 further discovery of the expert may be obtained only by deposition pursuant to paragraph
227 (a)(4)(B) and Rule 30.
228 **(E) Summary of non-retained expert testimony.** If a party intends to present
229 evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an
230 expert witness who is retained or specially employed to provide testimony in the case or a
231 person whose duties as an employee of the party regularly involve giving expert testimony,
232 that party must serve on the other parties a written summary of the facts and opinions to which

233 the witness is expected to testify in accordance with the deadlines set forth in paragraph
234 (a)(4)(C). Such a witness cannot be required to provide a report pursuant to paragraph
235 (a)(4)(B). A deposition of such a witness may not exceed four hours and, unless manifest
236 injustice would result, the party taking the deposition must pay the expert's reasonable hourly
237 fees for attendance at the deposition.
238 **(5) Pretrial disclosures.**
239 (A) A party must, without waiting for a discovery request, serve on the other parties:
240 (i) the name and, if not previously provided, the address and telephone number of
241 each witness, unless solely for impeachment, separately identifying witnesses the party will
242 call and witnesses the party may call;
243 (ii) the name of witnesses whose testimony is expected to be presented by
244 transcript of a deposition;
245 (iii) designations of the proposed deposition testimony; and
246 (iv) a copy of each exhibit, including charts, summaries, and demonstrative
247 exhibits, unless solely for impeachment, separately identifying those which the party will offer
248 and those which the party may offer.
249 (B) Disclosure required by paragraph (a)(5)(A) must be served on the other parties at
250 least 28 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and (a)(5)(A)(ii) must
251 also be filed on the date that they are served. At least 14 days before trial, a party must serve
252 any counter designations of deposition testimony and any objections and grounds for the
253 objections to the use of any deposition, witness, or exhibit if the grounds for the objection are
254 apparent before trial. Other than objections under Rules 402 and 403 of the Utah Rules of
255 Evidence, other objections not listed are waived unless excused by the court for good cause.
256 **(6) Form of disclosure and discovery production.** Rule 34 governs the form in which all
257 documents, data compilations, electronically stored information, tangible things, and
258 evidentiary material should be produced under this Rule.
259 **(b) Discovery scope.**
260 **(1) In general.** Parties may discover any matter, not privileged, which is relevant to the
261 claim or defense of any party if the discovery satisfies the standards of proportionality set forth
262 below.
263 **(2) Privileged matters.**
264 (A) Privileged matters that are not discoverable or admissible in any proceeding of
265 any kind or character include:
266 (i) all information in any form provided during and created specifically as part of a

267 request for an investigation, the investigation, findings, or conclusions of peer review, care
268 review, or quality assurance processes of any organization of health care providers as defined
269 in Utah Code Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for the purpose
270 of evaluating care provided to reduce morbidity and mortality or to improve the quality of
271 medical care, or for the purpose of peer review of the ethics, competence, or professional
272 conduct of any health care provider; and
273 (ii) except as provided in paragraph (b)(2)(C), (D), or (E), all communications,
274 materials, and information in any form specifically created for or during a medical candor
275 process under Utah Code Title 78B, Chapter 3, Part 4a, Utah Medical Candor Act, including
276 any findings or conclusions from the investigation and any offer of compensation.
277 (B) Disclosure or use in a medical candor process of any communication, material,
278 or information in any form that contains any information described in paragraph (b)(2)(A)(i)
279 does not waive any privilege or protection against admissibility or discovery of the
280 information under paragraph (b)(2)(A)(i).
281 (C) Any communication, material, or information in any form that is made or
282 provided in the ordinary course of business, including a medical record or a business record,
283 that is otherwise discoverable or admissible and is not created for or during a medical candor
284 process is not privileged by the use or disclosure of the communication, material, or
285 information during a medical candor process.
286 (D) (i) Any information that is required to be documented in a patient's medical
287 record under state or federal law is not privileged by the use or disclosure of the information
288 during a medical candor process.
289 (ii) Information described in paragraph (b)(2)(D)(i) does not include an
290 individual's mental impressions, conclusions, or opinions that are formed outside the course
291 and scope of the patient's care and treatment and are used or disclosed in a medical candor
292 process.
293 (E) (i) Any communication, material, or information in any form that is provided to
294 an affected party before the affected party's written agreement to participate in a medical
295 candor process is not privileged by the use or disclosure of the communication, material, or
296 information during a medical candor process.
297 (ii) Any communication, material, or information described in paragraph
298 (b)(2)(E)(i) does not include a written notice described in Utah Code section 78B-3-452.
299 (F) The terms defined in Utah Code section 78B-3-450 apply to paragraphs
300 (b)(2)(A)(ii), (B), (C), (D), and (E).

301 (G) Nothing in this paragraph (b)(2) shall prevent a party from raising any other
302 privileges provided by law or rule as to the admissibility or discovery of any communication,
303 information, or material described in paragraph (b)(2)(A), (B), (C), (D), or (E).
304 **(3) Proportionality.** Discovery and discovery requests are proportional if:
305 (A) the discovery is reasonable, considering the needs of the case, the amount in
306 controversy, the complexity of the case, the parties' resources, the importance of the issues,
307 and the importance of the discovery in resolving the issues;
308 (B) the likely benefits of the proposed discovery outweigh the burden or expense;
309 (C) the discovery is consistent with the overall case management and will further the
310 just, speedy, and inexpensive determination of the case;
311 (D) the discovery is not unreasonably cumulative or duplicative;
312 (E) the information cannot be obtained from another source that is more convenient,
313 less burdensome, or less expensive; and
314 (F) the party seeking discovery has not had sufficient opportunity to obtain the
315 information by discovery or otherwise, taking into account the parties' relative access to the
316 information.
317 **(4) Burden.** The party seeking discovery always has the burden of showing
318 proportionality and relevance. To ensure proportionality, the court may enter orders under
319 Rule 37.
320 **(5) Electronically stored information.** A party claiming that electronically stored
321 information is not reasonably accessible because of undue burden or cost must describe the
322 source of the electronically stored information, the nature and extent of the burden, the nature
323 of the information not provided, and any other information that will enable other parties to
324 evaluate the claim.
325 **(6) Trial preparation materials.** A party may obtain otherwise discoverable documents
326 and tangible things prepared in anticipation of litigation or for trial by or for another party or
327 by or for that other party's representative (including the party's attorney, consultant, surety,
328 indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has
329 substantial need of the materials and that the party is unable without undue hardship to obtain
330 substantially equivalent materials by other means. In ordering discovery of such materials, the
331 court must protect against disclosure of the mental impressions, conclusions, opinions, or legal
332 theories of an attorney or other representative of a party.
333 **(7) Statement previously made about the action.** A party may obtain without the
334 showing required in paragraph (b)(5) a statement concerning the action or its subject matter

335 previously made by that party. Upon request, a person not a party may obtain without the
336 required showing a statement about the action or its subject matter previously made by that
337 person. If the request is refused, the person may move for a court order under Rule 37. A
338 statement previously made is: (A) a written statement signed or approved by the person
339 making it[,] ; or (B) a stenographic, mechanical, electronic, or other recording, or a
340 transcription thereof, which is a substantially verbatim recital of an oral statement by the
341 person making it and contemporaneously recorded.
342 **(8) Trial preparation; experts.**
343 **(A) Trial-preparation protection for draft reports or disclosures.** Paragraph (b)(6)
344 protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the
345 form in which the draft is recorded.
346 **(B) Trial-preparation protection for communications between a party's attorney and**
347 **expert witnesses.** Paragraph (b)(6) protects communications between the party's attorney and
348 any witness required to provide disclosures under paragraph (a)(4), regardless of the form of
349 the communications, except to the extent that the communications:
350 (i) relate to compensation for the expert's study or testimony;
351 (ii) identify facts or data that the party's attorney provided and that the expert
352 considered in forming the opinions to be expressed; or
353 (iii) identify assumptions that the party's attorney provided and that the expert
354 relied on in forming the opinions to be expressed.
355 **(C) Expert employed only for trial preparation.** Ordinarily, a party may not, by
356 interrogatories or otherwise, discover facts known or opinions held by an expert who has been
357 retained or specially employed by another party in anticipation of litigation or to prepare for
358 trial and who is not expected to be called as a witness at trial. A party may do so only:
359 (i) as provided in Rule 35(b); or
360 (ii) on showing exceptional circumstances under which it is impracticable for the
361 party to obtain facts or opinions on the same subject by other means.
362 **(9) Claims of privilege or protection of trial preparation materials.**
363 **(A) Information withheld.** If a party withholds discoverable information by claiming
364 that it is privileged or prepared in anticipation of litigation or for trial, the party must make the
365 claim expressly and must describe the nature of the documents, communications, or things not
366 produced in a manner that, without revealing the information itself, will enable other parties to
367 evaluate the claim.
368 **(B) Information produced.** If a party produces information that the party claims is

369 privileged or prepared in anticipation of litigation or for trial, the producing party may notify
370 any receiving party of the claim and the basis for it. After being notified, a receiving party
371 must promptly return, sequester, or destroy the specified information and any copies it has and
372 may not use or disclose the information until the claim is resolved. A receiving party may
373 promptly present the information to the court under seal for a determination of the claim. If the
374 receiving party disclosed the information before being notified, it must take reasonable steps to
375 retrieve it. The producing party must preserve the information until the claim is resolved.
376 **(C) Information disclosed in a legislative audit.** If a party is an entity that is subject to an
377 audit by the legislative auditor general under Utah Constitution, Article VI, Section 33, and
378 information that is privileged or prepared in anticipation of litigation or for trial is disclosed to
379 the legislative auditor general or an arbitrator as described in Utah Code section 36-12-15, the
380 disclosure to the legislative auditor general or the arbitrator does not make the information
381 discoverable or prevent the party from claiming that the information is privileged and prepared
382 in anticipation of litigation or for trial.
383 **(c) Methods, sequence, and timing of discovery; tiers; limits on standard discovery;**
384 **extraordinary discovery.**
385 **(1) Methods of discovery.** Parties may obtain discovery by one or more of the
386 following methods: depositions upon oral examination or written questions; written
387 interrogatories; production of documents or things or permission to enter upon land or other
388 property, for inspection and other purposes; physical and mental examinations; requests for
389 admission; and subpoenas other than for a court hearing or trial.
390 **(2) Sequence and timing of discovery.** Methods of discovery may be used in any
391 sequence, and the fact that a party is conducting discovery must not delay any other party's
392 discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery
393 from any source before that party's initial disclosure obligations are satisfied.
394 **(3) Definition of tiers for standard discovery.** Actions claiming $50,000 or less in
395 damages are permitted standard discovery as described for Tier 1. Actions claiming more than
396 $50,000 and less than $300,000 in damages are permitted standard discovery as described for
397 Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as
398 described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions
399 claiming non-monetary relief are permitted standard discovery as described for Tier 2.
400 Domestic relations actions are permitted standard discovery as described for Tier 4.
401 **(4) Definition of damages.** For purposes of determining standard discovery, the amount
402 of damages includes the total of all monetary damages sought (without duplication for

403 alternative theories) by all parties in all claims for relief in the original pleadings.
404 **(5) Limits on standard fact discovery.** Standard fact discovery per side (plaintiffs
405 collectively, defendants collectively, and third-party defendants collectively) in each tier is as
406 follows. The days to complete standard fact discovery are calculated from the date the first
407 defendant's first disclosure is due and do not include expert discovery under paragraphs
408 (a)(4)(C) and (D).
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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
4	Domestic relations actions	4	10	10	10	90

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414 **(6) Extraordinary discovery.** To obtain discovery beyond the limits established in
415 paragraph (c)(5), a party must:
416 (A) before the close of standard discovery and after reaching the limits of standard
417 discovery imposed by these rules, file a stipulated statement that extraordinary discovery is
418 necessary and proportional under paragraph (b)(2) and, for each party represented by an
419 attorney, a statement that the attorney consulted with the client about the request for
420 extraordinary discovery;
421 (B) before the close of standard discovery and after reaching the limits of standard
422 discovery imposed by these rules, file a request for extraordinary discovery under Rule 37(a);
423 or
424 (C) obtain an expanded discovery schedule under Rule 100A.
425 **(d) Requirements for disclosure or response; disclosure or response by an organization;**
426 **failure to disclose; initial and supplemental disclosures and responses.**
427 (1) A party must make disclosures and responses to discovery based on the information

428 then known or reasonably available to the party.
429 (2) If the party providing disclosure or responding to discovery is a corporation,
430 partnership, association, or governmental agency, the party must act through one or more
431 officers, directors, managing agents, or other persons, who must make disclosures and
432 responses to discovery based on the information then known or reasonably available to the
433 party.
434 (3) A party is not excused from making disclosures or responses because the party has
435 not completed investigating the case, the party challenges the sufficiency of another party's
436 disclosures or responses, or another party has not made disclosures or responses.
437 (4) If a party fails to disclose or to supplement timely a disclosure or response to
438 discovery, that party may not use the undisclosed witness, document, or material at any
439 hearing or trial unless the failure is harmless or the party shows good cause for the failure.
440 (5) If a party learns that a disclosure or response is incomplete or incorrect in some
441 important way, the party must timely serve on the other parties the additional or correct
442 information if it has not been made known to the other parties. The supplemental disclosure or
443 response must state why the additional or correct information was not previously provided.
444 **(e) Signing discovery requests, responses, and objections.** Every disclosure, request for
445 discovery, response to a request for discovery, and objection to a request for discovery must be
446 in writing and signed by at least one attorney of record or by the party if the party is not
447 represented. The signature of the attorney or party is a certification under Rule 11. If a request
448 or response is not signed, the receiving party does not need to take any action with respect to
449 it. If a certification is made in violation of the rule, the court, upon motion or upon its own
450 initiative, may take any action authorized by Rule 11 or Rule 37(b).
451 **(f) Filing.** Except as required by these rules or ordered by the court, a party must not file
452 with the court a disclosure, a request for discovery, or a response to a request for discovery,
453 but must file only the certificate of service stating that the disclosure, request for discovery, or
454 response has been served on the other parties and the date of service.
455 Section 3. **Rule 504,** Utah Rules of Evidence is amended to read:
456 **Rule 504 . Legal Professional - Client.**
457 **(a) Definitions.**
458 **[~~(a)~~](1)** "Legal services" means the provision of:
459 **[~~(a)(1)~~](A)** professional counsel, advice, direction or guidance on a legal matter or
460 question;
461 **[~~(a)(1)~~](B)** professional representation on the client's behalf on a legal matter; or

462 **[~~(a)(1)~~](C)** referral to a legal professional.
463 **[~~(a)~~](2)** "Client" means a person, public officer, corporation, association, or other
464 organization or entity, either public or private, who is rendered legal services.
465 **[~~(a)~~](3)** "Lawyer" means a person authorized, or reasonably believed by the client to be
466 authorized, to practice law in any state or nation.
467 **[~~(a)~~](4)** "Legal professional" means a lawyer or any other person or entity authorized, or
468 reasonably believed by the client to be authorized, in the State of Utah to provide legal
469 services.
470 **[~~(a)~~](5)** "Legal Professional referral service" means an organization, either non-profit or
471 for-profit, that provides intake or screening services to clients or prospective clients for legal
472 services.
473 **[~~(a)~~](6)** "Legal professional's representative" means a person or entity employed to assist
474 the legal professional in the rendition of legal services.
475 **[~~(a)~~](7)** "Client's representative" means a person or entity authorized by the client to:
476 **[~~(a)(7)~~](A)** obtain legal services for or on behalf of the client;
477 **[~~(a)(7)~~](B)** act on advice rendered pursuant to legal services for or on behalf of the
478 client;
479 **[~~(a)(7)~~](C)** provide assistance to the client that is reasonably necessary to facilitate
480 the client's confidential communications; or
481 **[~~(a)(7)~~](D)** disclose, as an employee or agent of the client, confidential information
482 concerning a legal matter to the legal professional.
483 **[~~(a)~~](8)** "Communication" includes:
484 **[~~(a)(8)~~](A)** advice, direction or guidance given by the legal professional the legal
485 professional's representative, or a lawyer referral service in the course of providing legal
486 services; and
487 **[~~(a)(8)~~](B)** disclosures of the client and the client's representative to the legal
488 professional the legal professional's representative, or a lawyer referral service incidental to the
489 client's legal services.
490 **[~~(a)~~](9)** "Confidential communication" means a communication not intended to be
491 disclosed to third persons other than those to whom disclosure is in furtherance of rendition of
492 legal services to the client or to those reasonably necessary for the transmission of the
493 communication.
494 **(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to prevent
495 any other person from disclosing, confidential communications if:

496 **[~~(b)~~](1)** the communications were made for the purpose or in the course of obtaining or
497 facilitating the rendition of legal services to the client; and
498 **[~~(b)~~](2)** the communications were:
499 **[~~(b)(2)~~](A)** between (i) the client or the client's representative and (ii) the legal
500 professional, the legal professional's representatives, or a legal professional representing others
501 in matters of common interest;
502 **[~~(b)(2)~~](B)** between clients or clients' representatives as to matters of common
503 interest but only if each clients' legal professional or legal professional's representatives was
504 also present or included in the communications;
505 **[~~(b)(2)~~](C)** between (i) the client or the client's representatives and (ii) a legal
506 professional referral service; or
507 **[~~(b)(2)~~](D)** between (i) the client's legal professional or legal professional's
508 representatives and (ii) a legal professional referral service.
509 **(c) Who May Claim the Privilege.** The privilege may be claimed by:
510 **[~~(c)~~](1)** the client;
511 **[~~(c)~~](2)** the client's guardian or conservator;
512 **[~~(c)~~](3)** the personal representative of a client who is deceased;
513 **[~~(c)~~](4)** the successor, trustee, or similar representative of a client that was a corporation,
514 association, or other organization, whether or not in existence; and
515 **[~~(c)~~](5)** the legal professional or the lawyer referral service on behalf of the client.
516 **(d) Exceptions to the Privilege.** [~~Privilege does not apply in the following circumstances~~]
517 The privilege does not apply:
518 **[~~(d)(1) Furtherance of the Crime or Fraud.~~** ~~If~~] **(1)** if the services of the legal
519 professional were sought or obtained to enable or aid anyone to commit or plan to commit
520 what the client knew or reasonably should have known to be a crime or fraud;
521 **[~~(d)(2) Claimants through Same Deceased Client.~~** ~~As~~] **(2)** as to a communication
522 relevant to an issue between parties who claim through the same deceased client, regardless of
523 whether the claims are by testate or intestate succession or by inter vivos transaction;
524 **[~~(d)(3) Breach of Duty by Legal Professional or Client.~~** ~~As~~] **(3)** as to a communication
525 relevant to an issue of breach of duty by the legal professional to the client;
526 **[~~(d)(4) Document Attested by Legal Professional.~~** ~~As~~] **(4)** as to a communication
527 relevant to an issue concerning a document to which the legal professional was an attesting
528 witness;[~~ or~~
529 **~~(d)(5) Joint Clients.~~** ~~As~~] **(5)** to the communication relevant to a matter of common

530 interest between two or more clients if the communication was made by any of them to a legal
531 professional retained or consulted in common, when offered in an action between any of the
532 clients[.] ; or
533 (6) to the legislative auditor general or an arbitrator if the client is subject to an audit
534 by the legislative auditor general under Utah Constitution, Article VI, Section 33, and the
535 communication is disclosed to the legislative auditor general or the arbitrator as described in
536 Utah Code section 36-12-15.
537 Section 4. **Rule 510,** Utah Rules of Evidence is amended to read:
538 **Rule 510 . Miscellaneous Matters.**
539 **(a) Waiver of Privilege.**
540 **(1)** [A] Except as provided in paragraph (a)(2) or (a)(3), a person who holds a privilege
541 under these rules waives the privilege if the person or a previous holder of the privilege:
542 **[(a)(1)] (A)** voluntarily discloses or consents to the disclosure of any significant part
543 of the matter or communication[,] ; or
544 **[(a)(2)] (B)** fails to take reasonable precautions against inadvertent disclosure.
545 **(2)** [This] The privilege is not waived if the disclosure is itself a privileged
546 communication.
547 **(3)** The disclosure of a communication under Rule 504(d)(6) to the legislative auditor
548 general or an arbitrator does not waive the privilege under paragraph (a)(1) to any other person
549 or entity.
550 **(b) Inadmissibility of Disclosed Information.** Evidence of a statement or other disclosure of
551 privileged matter is not admissible against the holder of the privilege if disclosure was
552 compelled erroneously or made without opportunity to claim the privilege.
553 **(c) Comment or Inference Not Permitted.** The claim of privilege, whether in the present
554 proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel.
555 No inference may be drawn from any claim of privilege.
556 **(d) Claiming Privilege Without the Jury's Knowledge.** To the extent practicable, jury cases
557 shall be conducted to allow claims of privilege to be made without the jury's knowledge.
558 **(e) Jury Instruction.** Upon request, any party against whom the jury might draw an adverse
559 inference from the claim of privilege is entitled to a jury instruction that no inference may be
560 drawn from that claim of privilege.
561 **(f) Privilege Against Self-Incrimination in Civil Cases.** In a civil case, the provisions of [
562 paragraph (c)-(e)] paragraphs (c) through (e) do not apply when the privilege against
563 self-incrimination has been invoked.

564 Section 5. **Effective date.**

565 As provided in Utah Constitution, Article VIII, Section 4, this resolution takes effect

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