

1 **ORCP 36**

2 **GENERAL PROVISIONS GOVERNING DISCOVERY**

3 **A Discovery methods.** Parties may obtain discovery by one or more of the following
4 methods: depositions upon oral examination or written questions; production of documents or
5 things or permission to enter upon land or other property, for inspection and other purposes;
6 physical and mental examinations; and requests for admission.

7 **B Scope of discovery.** Unless otherwise limited by order of the court in accordance with
8 these rules, the scope of discovery is as follows:

9 **B(1) In general.** For all forms of discovery, parties may inquire regarding any matter, not
10 privileged, which is relevant to the claim or defense of the party seeking discovery or to the
11 claim or defense of any other party, including the existence, description, nature, custody,
12 condition, and location of any books, documents, **electronically stored information**, or other
13 tangible things, and the identity and location of persons having knowledge of any discoverable
14 matter. It is not ground for objection that the information sought will be inadmissible at the trial
15 if the information sought appears reasonably calculated to lead to the discovery of admissible
16 evidence.

17 **B(2) Insurance agreements or policies.** B(2)(a) A party, upon the request of an adverse
18 party, shall disclose the existence and contents of any insurance agreement or policy under
19 which a person transacting insurance may be liable to satisfy part or all of a judgment which may
20 be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

21 B(2)(b) The obligation to disclose under this subsection shall be performed as soon as
22 practicable following the filing of the complaint and the request to disclose. The court may
23 supervise the exercise of disclosure to the extent necessary to insure that it proceeds properly and
24 expeditiously. However, the court may limit the extent of disclosure under this subsection as
25 provided in section C of this rule.

26 B(2)(c) Information concerning the insurance agreement or policy is not by reason of

1 disclosure admissible in evidence at trial. For purposes of this subsection, an application for
2 insurance shall not be treated as part of an insurance agreement or policy.

3 B(2)(d) As used in this subsection, “disclose” means to afford the adverse party an
4 opportunity to inspect or copy the insurance agreement or policy.

5 **B(3) Trial preparation materials.** Subject to the provisions of Rule 44, a party may
6 obtain discovery of documents, electronically stored information, and tangible things
7 otherwise discoverable under subsection B(1) of this rule and prepared in anticipation of
8 litigation or for trial by or for another party or by or for that other party’s representative
9 (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing
10 that the party seeking discovery has substantial need of the materials in the preparation of such
11 party’s case and is unable without undue hardship to obtain the substantial equivalent of the
12 materials by other means. In ordering discovery of such materials when the required showing has
13 been made, the court shall protect against disclosure of the mental impressions, conclusions,
14 opinions, or legal theories of an attorney or other representative of a party concerning the
15 litigation.

16 A party may obtain, without the required showing, a statement concerning the action or
17 its subject matter previously made by that party. Upon request, a person who is not a party may
18 obtain, without the required showing, a statement concerning the action or its subject matter
19 previously made by that person. If the request is refused, the person or party requesting the
20 statement may move for a court order. The provisions of Rule 46 A(4) apply to the award of
21 expenses incurred in relation to the motion. For purposes of this subsection, a statement
22 previously made is (a) a written statement signed or otherwise adopted or approved by the
23 person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a
24 transcription thereof, which is a substantially verbatim recital of an oral statement by the person
25 making it and contemporaneously recorded.

26 **C Court order limiting extent of disclosure.** Upon motion by a party or by the person

1 from whom discovery is sought, and for good cause shown, the court in which the action is
2 pending may make any order which justice requires to protect a party or person from annoyance,
3 embarrassment, oppression, or undue burden or expense, including one or more of the following:
4 (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and
5 conditions, including a designation of the time or place; (3) that the discovery may be had only
6 by a method of discovery other than that selected by the party seeking discovery; (4) that certain
7 matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5)
8 that discovery be conducted with no one present except persons designated by the court; (6) that
9 a deposition after being sealed be opened only by order of the court; (7) that a trade secret or
10 other confidential research, development, or commercial information not be disclosed or be
11 disclosed only in a designated way; (8) that the parties simultaneously file specified documents
12 or information enclosed in sealed envelopes to be opened as directed by the court; or (9) that to
13 prevent hardship the party requesting discovery pay to the other party reasonable expenses
14 incurred in attending the deposition or otherwise responding to the request for discovery.

15 If the motion for a protective order is denied in whole or in part, the court may, on such
16 terms and conditions as are just, order that any party or person provide or permit discovery. The
17 provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the motion.

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15 reasonably calculated to lead to the discovery of admissible evidence.

16 **B(2) Insurance agreements or policies.**

17 B(2)(a) A party, upon the request of an adverse party, shall disclose:

18 **B(2)(a)(i)** the existence and contents of any insurance agreement or policy under which a
19 person transacting insurance may be liable to satisfy part or all of a judgment which may be
20 entered in the action or to indemnify or reimburse for payments made to satisfy the judgment[.];

21 **and**

22 **B(2)(a)(ii) the existence of any coverage denial or reservation of rights, and identify**
23 **the provision in any insurance agreement or policy upon which such coverage denial or**
24 **reservation of rights is based.**

25 B(2)(b) The obligation to disclose under this subsection shall be performed as soon as
26 practicable following the filing of the complaint and the request to disclose. The court may

1 supervise the exercise of disclosure to the extent necessary to insure that it proceeds properly and
2 expeditiously. However, the court may limit the extent of disclosure under this subsection as
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12 for that other party’s representative (including an attorney, consultant, surety, indemnitor,
13 insurer, or agent) only upon a showing that the party seeking discovery has substantial need of
14 the materials in the preparation of such party’s case and is unable without undue hardship to
15 obtain the substantial equivalent of the materials by other means. In ordering discovery of such
16 materials when the required showing has been made, the court shall protect against disclosure of
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