

1 Rule 4-508. Guidelines for ruling on a motion to waive fees.

2 Intent:

3 To promote statewide consistency in deciding motions to waive fees in civil cases in
4 which the moving party is not a prisoner.

5 Nothing in this rule should be interpreted as limiting the discretion of the judge to
6 decide a motion to waive fees.

7 Applicability:

8 This rule applies to all civil and small claims cases in which the moving party is not a
9 prisoner.

10 As used in this rule “fee waiver” and similar phrases include waiving the fee in full or
11 in part, as may be ordered by the judge.

12 Statement of the Rule:

13 (1) The moving party must complete a motion to waive fees and a financial affidavit
14 approved by the Board of District Court Judges. The moving party must provide
15 supporting documentation of the claims made in the affidavit.

16 (2) Upon the filing of a motion to waive fees and financial affidavit, the court, sheriff
17 or any other provider of a service offered by or through a government entity shall do
18 what is necessary and proper as promptly as if the fee had been fully paid.

19 (3) A motion to waive fees may be decided without notice to the other parties,
20 requires no response, request to submit for decision or hearing. The court will review
21 the affidavit and make an independent determination whether the fee should be waived.
22 The court should apply a common sense standard to the information and evaluate
23 whether the information is complete, consistent and true. Section 78A-2-304 requires a
24 party to pay a full or partial fee if the financial affidavit and any further questioning
25 demonstrate the party is reasonably able to pay a fee.

26 (4) In general, a party is reasonably able to pay a fee if:

27 (4)(A) gross monthly income exceeds 100% of the poverty guidelines updated
28 periodically in the Federal Register by the U.S. Department of Health and Human
29 Services under the authority of 42 U.S.C. 9902(2).

30 (4)(B) the moving party has liquid assets that can be used to pay the fee without
31 harming the party's financial position;

32 (4)(C) the moving party has credit that can be used to pay the fee without harming
33 the party's financial position;

34 (4)(D) the moving party has assets that can be liquidated or borrowed against
35 without harming the party's financial position;

36 (4)(E) expenses are less than net income;

37 (4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the
38 moving party; or

39 (4)(G) in the judge's discretion, the moving party is reasonably able to pay some part
40 of the fee.

41 (5) If the moving party is represented, the motion to waive fees may be granted in
42 proportion to the attorney's discount of the attorney fee. The moving party's attorney
43 must provide an affidavit describing the fee agreement and what percentage of the
44 attorney's normal, full fee is represented by the discounted fee.

45 (6) A motion to waive fees should be ruled upon within ten days after being filed.

46 (6)(A) If the fee is fully waived, the court, sheriff or any other provider of a service
47 offered by or through a government entity shall do what is necessary and proper as
48 promptly as if the fee had been fully paid.

49 (6)(B) If the fee is not fully waived, the court, sheriff or any other provider of a service
50 offered by or through a government entity may require payment of the fee before doing
51 what is necessary and proper. If the service has already been performed, the court,
52 sheriff or service provider may do what is necessary and proper to collect the fee,
53 including dismissal of the case.

54 (6)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee
55 amount, the procedure to challenge the fee; the consequences of failing to pay the fee.

56 (6)(D) If the motion is rejected because of a technical error, such as failure to
57 complete a form correctly or to attach supporting documentation, the court shall notify
58 the moving party, and the moving party may file a corrected motion and affidavit within
59 14 days after being notified of the decision.

60 (7) The moving party may contest the fee under Section 78A-2-307 within ten days
61 after receiving notice of the decision. If the party fails to contest the fee, the party must
62 pay the fee within 30 days after receiving notice of the decision. If the contest is denied,
63 the party must pay the fee within 30 days after receiving notice of the decision denying
64 the contest. If the party fails to pay the fee, the court will dismiss the case without
65 prejudice.

66 (8) The non-moving party may challenge the veracity of the moving party's affidavit
67 under Section 78A-2-303.

68 (9) An order granting a fee waiver may be reviewed at any time if the court has
69 jurisdiction of the case. If the court determines, after waiving a fee, that the moving party
70 is reasonably able to pay the fee, including from the proceeds of a judgment, the court
71 may modify its previous order. The court may allocate the fee among the parties under
72 Utah Rule of Civil Procedure 54 or Utah Code Section 30-3-3.

73