

1 **Rule 6-506. Procedure for contested matters filed in the probate court.**

2 **Intent:**

3 To establish procedures for contested matters filed in the probate court.

4 **Applicability:**

5 This rule applies to matters filed under Title 75, Utah Uniform Probate Code when an objection is made
6 orally or in writing upon the record (a “probate dispute”).

7 **Statement of the Rule:**

8 (1) **General Provisions.** When there is a probate dispute:

9 (1)(A) [Rule 4-510.05](#) of the Utah Code of Judicial Administration and [Rule 101](#) of the Utah
10 Rules of Court-Annexed Alternative Dispute Resolution apply.

11 (1)(B) Upon the filing of an objection with the court in accordance with Rule 26.4(c)(2) of the
12 Utah Rules of Civil Procedure, all probate disputes will be automatically referred by the
13 court to the Alternative Dispute Resolution (ADR) Program under [Rule 4-510.05](#) of the
14 Utah Code of Judicial Administration, unless the court waives mediation.

15 (1)(C) After an objection has been filed, and unless the court has waived mediation, the court
16 will schedule the matter for a pre-mediation conference for purposes of the following:

17 (1)(C)(i) determining whether there is good cause for the matter to not be referred to
18 mediation;

19 (1)(C)(ii) ensuring that a guardianship respondent has been provided counsel or that
20 the process provided in Utah Code section 75-5-303 has been followed;

21 (1)(C)(iii) determining all interested persons who should receive notice of mediation;

22 (1)(C)(iv) determining whether any interested person should be excused from
23 mediation;

24 (1)(C)(v) selecting the mediator or determining the process and time frame for
25 selecting the mediator, as provided in Code of Judicial Administration [Rule 4-
26 510.05](#);

27 (1)(C)(vi) determining the issues for mediation;

28 (1)(C)(vii) setting deadlines;

29 (1)(C)(viii) modifying initial disclosures if necessary and addressing discovery;

30 (1)(C)(ix) determining how mediation costs will be paid; and

31 (1)(C)(x) entering a mediation order.

32 (1)(D) The court will send notification of the pre-mediation conference to petitioner, respondent,
33 and all interested persons identified in the petition at the hearing and any objection as of
34 the date of the notification. The notification will include a statement that

35 (1)(D)(i) the interested persons have a right to be present and participate in the
36 mediation, the interested persons have a right to consult with or be

37 represented by their own counsel, and the interests of the interested persons

38 cannot be negotiated unless the interested persons specifically waive that
 39 right in writing; and
 40 (1)(D)(ii) unless excused by the court, an interested person who fails to participate
 41 after receiving notification of the mediation may be deemed to have waived
 42 their right to object to the resolution of the issues being mediated.

43 (2) **Procedure**

44 (2)(A) **Objections.** A party who files a timely objection pursuant to Rule of Civil Procedure 26.4
 45 is required to participate in the court-ordered mediation unless the court upon motion
 46 excuses the party's participation.

47 (2)(B) **Involvement of Interested Persons.**

48 (2)(B)(i) Any notice required under this rule must be served in accordance with [Rule 5](#)
 49 of the Utah Rules of Civil Procedure.

50 (2)(B)(ii) Once mediation is scheduled, the petitioner must serve notice of the
 51 following to all interested persons:

52 (2)(B)(ii)(a) The time, date, and location of the scheduled mediation;

53 (2)(B)(ii)(b) The issues to be mediated as provided in the pre-mediation
 54 scheduling conference order;

55 (2)(B)(ii)(c) A statement that the interested persons have a right to be
 56 present and participate in the mediation, that the interested
 57 persons have a right to consult with or be represented by
 58 their own counsel, and that the interests of the interested
 59 persons cannot be negotiated unless the interested persons
 60 specifically waive that right in writing; and

61 (2)(B)(ii)(d) a statement that, unless excused by the court, an interested
 62 person who fails to participate after being served notice of
 63 the mediation may be deemed to have waived their right to
 64 object to the resolution of the issues being mediated.

65 (2)(B)(iii) Additional issues may be resolved at mediation as agreed upon by the
 66 mediating parties and the mediator.

67 (2)(B)(iv) Once the mediation has taken place, the petitioner must notify all interested
 68 persons in writing of the mediation's outcome, including any proposed
 69 settlement of additional issues.

70 (2)(B)(iv)(a) An excused person has the right to object to the settlement
 71 of any additional issue under (2)(B)(iii) within 7 days of
 72 receiving written notice of the settlement.

73 (2)(B)(iv)(b) Any objection to the settlement of additional issues must be
 74 reduced to a writing, set forth the grounds for the objection

- 75 and any supporting authority, and be filed with the court and
76 mailed to the parties named in the petition and any
77 interested persons as provided in Utah Code § 75-1-201(24).
78 (2)(B)(iv)(c) Upon the filing of an objection to the settlement of additional
79 issues, the case will proceed pursuant to paragraphs (2)(C)
80 through (2)(I).
- 81 (2)(C) **Deadline for mediation completion.**
- 82 (2)(C)(i) Mediation must be completed within 60 days from the date of referral.
83 (2)(C)(ii) If the parties agree to a different date, the parties must file notice of the new
84 date with the court.
- 85 (2)(D) **Mediation Fees.**
- 86 (2)(D)(i) If the estate or trust has liquid assets, and the personal representative,
87 trustee, guardian, or conservator, as applicable, is a mediating party, the
88 estate or trust must pay the mediator's fees.
- 89 (2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation but may
90 later request reimbursement from the estate or trust if the estate or trust has
91 liquid assets.
- 92 (2)(D)(iii) A party may petition the court for a waiver of all or part of the mediation fees
93 if the party cannot afford mediator fees or for other good cause.
- 94 (2)(D)(iv) If the court grants a waiver of mediation fees, the party must contact the ADR
95 Director who will appoint a pro bono mediator.
- 96 (2)(E) **Initial disclosures.** Within 14 days after a written objection has been filed, the parties
97 must comply with the initial disclosure requirements of Rule 26.4 of the Rules of Civil
98 Procedure.
- 99 (2)(F) **Discovery once a probate dispute arises.** Except as provided in Rule 26.4 of the Rules
100 of Civil Procedure or as otherwise ordered by the court, once a probate dispute arises,
101 discovery will proceed pursuant to the Rules of Civil Procedure, including the other
102 provisions of [Rule 26](#).
- 103 (2)(G) **Completion of mediation.** Upon completion of mediation, the parties will notify the Court
104 of the mediation's resolution pursuant to [Rule 101](#) of the Utah Rules of Court-Annexed
105 Alternative Dispute Resolution.
- 106 (2)(H) **Written settlement agreement.** If mediation results in a written settlement agreement,
107 upon a motion from any party, the court may enter orders consistent with its terms. The
108 filing of an objection under paragraph (2)(B)(iv)(a) does not preclude the court from
109 entering orders consistent with the resolved issues.
- 110 (2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the
111 parties must request a pretrial conference with the assigned judge to establish the

112 deadlines for any supplemental initial disclosures, fact discovery, expert disclosures,
113 expert discovery, and readiness for trial.
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