

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 and in the
4 expungement of criminal records in which the moving party is not a prisoner.

5 To promote statewide consistency in deciding motions to waive fees in juvenile court cases in
6 which the moving party is not a prisoner.

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

9 **Applicability:**

10 This rule applies to all civil and small claims cases and in the expungement of criminal records
11 in which the moving party is not a prisoner.

12 This rule applies to all juvenile court cases in which the moving party is not a prisoner.

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

15 **Statement of the Rule:**

16 (1) The moving party must complete a motion to waive fees and a financial affidavit approved

17 by the ~~Board of District Court Judges or, in the juvenile court, by the Board of Juvenile~~
18 ~~Court Judges, Judicial Council's Standing Committee on Court Forms.~~ If requested by the
19 court, The the moving party must provide supporting documentation of the claims made in
20 the affidavit. In juvenile court, the minor or a minor's parent, guardian or authorized
21 representative may move to waive fees.

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

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

Commented [MCD1]: This change is presently out for public comment (as of 20180928), which comment period closes 20181112. This change is project 20180606a.

Commented [MCD2]: This change is the new proposed amendment for this project. It is project 20181004a.

- 32 (4) In general, a party is reasonably able to pay a fee if:
 - 33 (4)(A) gross monthly income exceeds 100% of the poverty guidelines updated
 - 34 periodically in the Federal Register by the U.S. Department of Health and Human
 - 35 Services under the authority of 42 U.S.C. 9902(2).
 - 36 (4)(B) the moving party has liquid assets that can be used to pay the fee without
 - 37 harming the party's financial position;
 - 38 (4)(C) the moving party has credit that can be used to pay the fee without harming the
 - 39 party's financial position;
 - 40 (4)(D) the moving party has assets that can be liquidated or borrowed against without
 - 41 harming the party's financial position;
 - 42 (4)(E) expenses are less than net income;
 - 43 (4)(F) Section 30-3-3 applies and the court orders another party to pay the fee of the
 - 44 moving party; or
 - 45 (4)(G) in the judge's discretion, the moving party is reasonably able to pay some part of
 - 46 the fee.
- 47 (5) If the moving party is represented by private counsel, the motion to waive fees may be
- 48 granted in proportion to the attorney's discount of the attorney fee. The moving party's
- 49 attorney must provide an affidavit describing the fee agreement and what percentage of
- 50 the attorney's normal, full fee is represented by the discounted fee.
- 51 (6) A motion to waive fees should be ruled upon within ten days after being filed.
 - 52 (6)(A) If the fee is fully waived, the court, sheriff or any other provider of a service
 - 53 offered by or through a government entity shall do what is necessary and proper
 - 54 as promptly as if the fee had been fully paid.
 - 55 (6)(B) If the fee is not fully waived, the court, sheriff or any other provider of a service
 - 56 offered by or through a government entity may require payment of the fee before
 - 57 doing what is necessary and proper. If the service has already been performed,
 - 58 the court, sheriff or service provider may do what is necessary and proper to
 - 59 collect the fee, including dismissal of the case.
 - 60 (6)(C) If the fee is not fully waived, the court shall notify the party in writing of the fee
 - 61 amount, the procedure to challenge the fee, ~~and~~ and the consequences of failing to
 - 62 pay the fee.
 - 63 (6)(D) If the motion is rejected because of a technical error, such as failure to complete
 - 64 a form correctly or to attach supporting documentation, the court shall notify the

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65 moving party, and the moving party may file a corrected motion and affidavit
66 within 14 days after being notified of the decision.

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

73 *Effective May/November 1, 20__*