

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 a written objection with the court in accordance with Rule 26.4(c)(2) of
12 the Utah Rules of Civil Procedure, all probate disputes will be automatically referred by
13 the court to the Alternative Dispute Resolution (ADR) Program under Rule 4-510.05 of
14 the 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 all interested persons who should receive notice of mediation,

18 (1)(C)(ii) determining whether any interested person should be excused from
19 mediation,

20 (1)(C)(iii) determining the issues for mediation,

21 (1)(C)(iv) setting deadlines,

22 (1)(C)(v) modifying initial disclosures if necessary and addressing discovery,

23 (1)(C)(vi) determining how mediation costs will be paid; and

24 (1)(C)(vii) entering a mediation order.

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

28 (1)(D)(i) the interested persons have a right to be present and participate in the
29 mediation, the interested persons have a right to consult with or be
30 represented by their own counsel, and the interests of the interested persons
31 cannot be negotiated unless the interested persons specifically waive that
32 right in writing; and

33 (1)(D)(ii) unless excused by the court, an interested person who fails to participate
34 after receiving notification of the mediation may be deemed to have waived
35 their right to object to the resolution of the issues being mediated.

36 (2) **Procedure**

- 37 (2)(A) **Objections.** A party who files a timely written objection pursuant to Rule of Civil
38 Procedure 26.4 is required to participate in the court-ordered mediation unless the court
39 upon motion excuses the party's participation.
- 40 (2)(B) **Involvement of Interested Persons.**
- 41 (2)(B)(i) Any notice required under this rule must be served in accordance with Rule 5
42 of the Utah Rules of Civil Procedure.
- 43 (2)(B)(ii) Once mediation is scheduled, the petitioner must serve notice of the
44 following to all interested persons:
- 45 (2)(B)(ii)(a) The time, date, and location of the scheduled mediation;
46 (2)(B)(ii)(b) The issues to be mediated as provided in the pre-mediation
47 scheduling conference order;
- 48 (2)(B)(ii)(c) A statement that the interested persons have a right to be
49 present and participate in the mediation, that the interested
50 persons have a right to consult with or be represented by
51 their own counsel, and that the interests of the interested
52 persons cannot be negotiated unless the interested persons
53 specifically waive that right in writing; and
- 54 (2)(B)(ii)(d) a statement that, unless excused by the court, an interested
55 person who fails to participate after being served notice of
56 the mediation may be deemed to have waived their right to
57 object to the resolution of the issues being mediated.
- 58 (2)(B)(iii) Additional issues may be resolved at mediation as agreed upon by the
59 mediating parties and the mediator.
- 60 (2)(B)(iv) Once the mediation has taken place, the petitioner must notify all interested
61 persons in writing of the mediation's outcome, including any proposed
62 settlement of additional issues.
- 63 (2)(B)(iv)(a) An excused person has the right to object to the settlement
64 of any additional issue under (2)(B)(iii) within 7 days of
65 receiving written notice of the settlement.
- 66 (2)(B)(iv)(b) Any objection to the settlement of additional issues must be
67 reduced to a writing, set forth the grounds for the objection
68 and any supporting authority, and be filed with the court and
69 mailed to the parties named in the petition and any
70 interested persons as provided in Utah Code § 75-1-201(24).
- 71 (2)(B)(iv)(c) Upon the filing of an objection to the settlement of additional
72 issues, the case will proceed pursuant to paragraphs (2)(C)
73 through (2)(I).

- 74 (2)(C) **Deadline for mediation completion.**
- 75 (2)(C)(i) Mediation must be completed within 60 days from the date of referral.
- 76 (2)(C)(ii) If the parties agree to a different date, the parties must file notice of the new
- 77 date with the court.
- 78 (2)(D) **Mediation Fees.**
- 79 (2)(D)(i) If the estate or trust has liquid assets, and the personal representative,
- 80 trustee, guardian, or conservator, as applicable, is a mediating party, the
- 81 estate or trust must pay the mediator's fees.
- 82 (2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation but may
- 83 later request reimbursement from the estate or ~~trust if the estate or trust has~~
- 84 ~~liquid assets.~~
- 85 (2)(D)(iii) A party may petition the court for a waiver of all or part of the mediation fees
- 86 if the party cannot afford mediator fees or for other good cause.
- 87 (2)(D)(iv) If the court grants a waiver of mediation fees, the party must contact the ADR
- 88 Director who will appoint a pro bono mediator.
- 89 (2)(E) **Initial disclosures.** Within 14 days after a written objection has been filed, the parties
- 90 must comply with the initial disclosure requirements of Rule 26.4 of the Rules of Civil
- 91 Procedure.
- 92 (2)(F) **Discovery once a probate dispute arises.** Except as provided in Rule 26.4 of the Rules
- 93 of Civil Procedure or as otherwise ordered by the court, once a probate dispute arises,
- 94 discovery will proceed pursuant to the Rules of Civil Procedure, including the other
- 95 provisions of Rule 26.
- 96 (2)(G) **Completion of mediation.** Upon completion of mediation, the parties will notify the Court
- 97 of the mediation's resolution pursuant to Rule 101 of the Utah Rules of Court-Annexed
- 98 Alternative Dispute Resolution.
- 99 (2)(H) **Written settlement agreement.** If mediation results in a written settlement agreement,
- 100 upon a motion from any party, the court may enter orders consistent with its terms. The
- 101 filing of an objection under paragraph (2)(B)(iv)(a) does not preclude the court from
- 102 entering orders consistent with the resolved issues.
- 103 (2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the
- 104 parties must request a pretrial conference with the assigned judge to establish the
- 105 deadlines for any supplemental initial disclosures, fact discovery, expert disclosures,
- 106 expert discovery, and readiness for trial, and to inform the parties of the availability of an
- 107 informal trial under Rule 4-1001.
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