

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
6 made 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 Rules
10 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 the
12 Utah Rules of Civil Procedure, all probate disputes will be automatically referred by the court to the
13 Alternative Dispute Resolution (ADR) Program under Rule 4-510.05 of the Utah Code of Judicial
14 Administration.

15 (1)(C) After an objection has been filed, the court will schedule the matter for a pre-mediation
16 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 mediation,

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

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

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

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

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

24 (1)(D) The court will send notification of the pre-mediation conference to petitioner, respondent,
25 and all interested persons identified in the petition and any objection as of the date of the notification.

26 The notification will include a statement that

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

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

34 (2) **Procedure**

35 (2)(A) **Objections.** A party who files a timely written objection pursuant to Rule of Civil Procedure
36 26.4 is required to participate in court-ordered mediation unless the court upon motion waives
37 mediation.

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

39 (2)(B)(i) Any notice required under this rule must be given in accordance with Rule 5 of the
40 Utah Rules of Civil Procedure.

41 (2)(B)(ii) Once mediation is scheduled, the petitioner must provide notice of the following to
42 all interested persons:

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

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

46 (2)(B)(ii)(c) A statement that the interested persons have a right to be present and
47 participate in the mediation, that the interested persons have a right to consult with or hire
48 their own counsel, and that the interests of the interested persons cannot be negotiated
49 unless the interested persons specifically waive that right in writing; and

50 (2)(B)(ii)(d) a statement that, unless excused by the court, an interested person who fails
51 to participate after receiving notification of the mediation may be deemed to have waived their
52 right to object to the resolution of the issues being mediated.

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

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

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

60 (2)(B)(iv)(b) Any objection to the settlement of additional issues must be reduced to a
61 writing, set forth the grounds for the objection and any supporting authority, and be filed
62 with the court and mailed to the parties named in the petition and any interested persons
63 as provided in Utah Code § 75-1-201(24).

64 (2)(B)(iv)(c) Upon the filing of an objection to the settlement of additional issues, the
65 case will proceed pursuant to paragraphs (2)(C) through (2)(I).

66 (2)(C) **Deadline for mediation completion.**

67 (2)(C)(i) Mediation must be completed within 60 days from the date of referral.

68 (2)(C)(ii) If the parties agree to a different date, the parties must file notice of the new date
69 with the court.

70 (2)(D) **Mediation Fees.**

71 (2)(D)(i) If a Personal Representative, Trustee, Guardian, or Conservator with liquid assets is
72 a party, the estate or trust will pay the mediator's fees.

73 (2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation and may later be
74 reimbursed from the estate or trust if the estate or trust has liquid assets.

75 (2)(D)(iii) A party may petition the court for a waiver of all or part of the mediation fees if the
76 party cannot afford mediator fees or for other good cause.

77 (2)(D)(iv) If the court grants a waiver of mediation fees, the party must contact the ADR
78 Director who will appoint a pro bono mediator.

79 (2)(E) **Initial disclosures.** Within 14 days after a written objection has been filed, the parties must
80 comply with the initial disclosure requirements of Rule 26.4 of the Rules of Civil Procedure.

81 (2)(F) **Discovery once a probate dispute arises.** Except as provided in Rule 26.4 of the Rules
82 of Civil Procedure or as otherwise ordered by the court, once a probate dispute arises, discovery will
83 proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

84 (2)(G) **Completion of mediation.** Upon completion of mediation, the parties will notify the Court
85 of the mediation's resolution pursuant to Rule 101 of the Utah Rules of Court-Annexed Alternative
86 Dispute Resolution.

87 (2)(H) **Written settlement agreement.** If mediation results in a written settlement agreement,
88 upon a motion from any party, the court may enter orders consistent with its terms. The filing of an
89 objection under paragraph (2)(B)(iv)(a) does not preclude the court from entering orders consistent
90 with the resolved issues.

91 (2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the
92 parties must request a pretrial conference with the assigned judge to confirm the deadlines for initial
93 disclosures, fact discovery, expert disclosures, expert discovery, readiness for trial, and the
94 availability of an informal trial under Rule 4-1001.