

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

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3 **Intent:**

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

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6 **Applicability:**

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

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10 **Statement of the Rule:**

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

12 (1)(A) Rule 4-510.05 of the Utah Code of Judicial Administration and Rule 101 of the
13 Utah Rules of Court-Annexed Alternative Dispute Resolution apply.

14 (1)(B) Upon the filing of an objection with the court in accordance with Rule
15 26.4(c)(2) of the Utah Rules of Civil Procedure, all probate disputes will be
16 automatically referred by the court to the Alternative Dispute Resolution (ADR)
17 Program under Rule 4-510.05 of the Utah Code of Judicial Administration, unless
18 the court waives mediation.

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

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

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

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

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

31 (1)(C)(v) selecting the mediator or determining the process and time frame
32 for selecting the mediator, as provided in Code of Judicial
33 Administration Rule 4-510.05;

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

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

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

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

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

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

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

45 be represented by their own counsel, and the interests of the
46 interested persons cannot be negotiated unless the interested
47 persons specifically waive that right in writing; and
48 (1)(D)(ii) unless excused by the court, an interested person who fails to
49 participate after receiving notification of the mediation may be deemed
50 to have waived their right to object to the resolution of the issues
51 being mediated.

52 (2) **Procedure**

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

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

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

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

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

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

65 (2)(B)(ii)(c) A statement that the interested persons have a
66 right to be present and participate in the mediation, that
67 the interested persons have a right to consult with or
68 be represented by their own counsel, and that the
69 interests of the interested persons cannot be
70 negotiated unless the interested persons specifically
71 waive that right in writing; and

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

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

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

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

86 (2)(B)(iv)(b) Any objection to the settlement of additional issues
87 must be reduced to a writing, set forth the grounds for
88 the objection and any supporting authority, and be filed

with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

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

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

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

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

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

(2)(D)(i) If the estate or trust has liquid assets, and the personal representative, trustee, guardian, or conservator, as applicable, is a mediating party, the estate or trust must pay the mediator's fees.

(2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation but may later request reimbursement from the estate or trust if the estate or trust has liquid assets.

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

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

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

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

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

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

(2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the parties must request a pretrial conference with the assigned judge to establish the deadlines for any supplemental initial disclosures, fact discovery, expert disclosures, expert discovery, and readiness for trial.

Effective ~~January 1,~~ [November 1, 2020](#).