

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA

IN RE: )  
 )  
ALTERNATIVE DISPUTE )  
RESOLUTION )

**GENERAL ORDER 2001-02**

The Court recognizes that a full, formal litigation may impose significant economic burdens on parties, and may delay resolutions of disputes for considerable periods. The Court also recognizes that sometimes an alternative dispute resolution procedure may enhance the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and the satisfaction with the process and result. The Court deems it necessary to adopt local ADR procedures to make quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. *See N.D. Ind. L.B.R. B-9019-2.*

THEREFORE, in the interest of prompt, efficient and economical administration of bankruptcy cases, the Court ORDERS that the following procedures shall govern alternative dispute resolution effective June 4, 2001.

**SECTION ONE**  
**General Provisions**

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**Section 1.1 Purpose**

Mediation under this section involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the Court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues,

reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the voluntary decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

#### Section 1.2 Immunity

All person serving as neutrals in any of the Court's ADR Programs are entitled to immunities and protections that the law accords to said persons, to the greatest extent possible while serving in such capacity.

#### Section 1.3 Jurisdiction of Proceeding

At all times during the course of any alternative dispute resolution proceeding, the case remains within the jurisdiction of the court. For good cause shown and upon hearing on this issue, the Court at any time may suspend or terminate the alternative dispute process.

#### Section 1.4 Other Methods of Dispute Resolution

\_\_\_\_\_These rules shall not preclude a court from ordering or the parties from agreeing upon any other reasonable method or technique to resolve disputes.

## **SECTION TWO** **Procedure**

#### Section 2.1 Motion

\_\_\_\_\_Any contested matter or adversary proceeding ("controversy") may be referred to

mediation ("mediation") by the Court upon its own motion, the agreement of parties, or upon the suggestion of any one party.

#### Section 2.2 Proposed Order

An agreement of the parties shall identify any filing deadlines or hearings that may need to be rescheduled to accommodate the mediation, shall propose such reasonable scheduling changes as are necessary to allow the mediation to proceed and shall be accompanied by a proposed order. If the parties have selected a mediator in accordance with Section 2.2 herein, the proposed order shall identify the mediator and provide for compensation in accordance with the requirements of Section 5.1 herein.

#### Section 2.3 Pendency of Matter

Unless otherwise ordered by the Court, the parties shall remain responsible for complying with all pleading, discovery, or Court imposed deadlines and any other applicable scheduling requirement established for the timely disposition of the controversy.

### **SECTION THREE** **Mediators**

#### Section 3.1 Application and Qualification Requirements

Each applicant applying for inclusion on the Approved Mediators List ("List") must submit to the Clerk of the Court the Application Form prescribed by the Clerk. Except as otherwise determined by the court, to be included as a mediator in the List, each applicant must meet the following criteria:

- (1) if the applicant is a lawyer, be a member in good standing of the bar of any state or the

District of Columbia, with at least five years of practice;

(2) not have been suspended, or have had a professional license revoked, or have pending any proceeding to suspend or revoke such license;

(3) not have resigned from a professional organization while an investigation into allegations of misconduct which would warrant suspension, disbarment or professional license revocation was pending;

(4) not have been convicted of a felony;

(5) have completed appropriate mediation training, or have sufficient experience, in the mediation process; and

(6) be determined by the court to be competent to perform the duties of a mediator.

### Section 3.2 Court Certification

(1) The court in its sole discretion shall grant or deny an application submitted pursuant to subsection 3.1 of this General Order. If the court grants the application, the applicant's name shall be added to the List, subject to removal pursuant to Section 3.6 of this General Order. Said List shall be maintained by the Clerk of this Court.

(2) Each Applicant shall immediately notify the Court of any event that would be the basis for refusal of an application as set forth in Section 3.1. Failure to so inform the Court is in itself basis for removal.

### Section 3.3 Reaffirmation of Qualifications

\_\_\_\_\_ Each applicant accepted for inclusion on the List shall reaffirm every three years the continued existence and accuracy of the qualifications, statements and representations made in the application. Failure to comply with this section shall be grounds for removal under Section

3.6.

Section 3.4 Mediator's Oath

\_\_\_\_\_ Before serving as a mediator, each person designated as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453, as if that person were a judge.

Section 3.5 Pro Bono Requirement

Every Mediator shall agree to accept at least two appointments annually, if so appointed, to handle pro bono mediations in consideration for said mediator's inclusion on the List.

Section 3.6 Removal from Register

\_\_\_\_\_ A person shall be removed from the List either for the reasons as follows:

- (a) Upon the person's request;
- (b) Upon court order, after notice of hearing;
- (c) On the first day of July following the third anniversary date of the person's inclusion on the list, unless said person refiles an Application pursuant to Section 3.3.

If removed by Court order, the person shall not be returned to the List absent a court order obtained on motion to the Chief Bankruptcy Judge supported by an affidavit sufficiently explaining the circumstances of such removal and the reasons justifying the return of the person to the List.

**SECTION FOUR**  
**Selection**

Section 4.1 Case Selection/Pro Se

- (a) At any time no less than fifteen (15) days after the filing of the first responsive pleading is filed, or, thirty (30) days after filing the initial pleading in a controversy, whichever is longer, the court, on its own motion, by agreement of the parties, or the suggestion of a party, may refer a controversy to mediation.
- (b) No controversy in which one or more parties is pro se shall be mediated.

#### Section 4.2 Appointment of Mediator

\_\_\_\_\_ Upon an order referring a case to mediation, the parties may, within seven (7) days:

- (a) Choose a mediator from the List; or
- (b) Agree upon a non-registered mediator who must be approved by the Court, and serves with leave of court.

In the event a mediator is not selected by the parties, the Court shall designate three (3) mediators from the List. Each side shall alternatively strike the name of one (1) mediator; the side initiating the controversy shall strike first. The mediator remaining after the striking process shall be deemed to be the selected mediator.

A person selected to serve as a mediator under this Rule may choose not to serve for any reason. At any time, a party may request the Court to replace the mediator for good cause shown. In the event a mediator chooses not to serve, or the Court decides to replace a mediator, the selection process shall be repeated.

#### Section 4.3 Disqualifying Events

Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. § 144. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require

disqualification if that person were a judge.

#### Section 4.4 Inquiry by Mediator; Disclosure

Promptly after receiving notice of appointment, the mediator shall make inquiry sufficient to determine whether there is a basis for disqualification under subsection 4.2 of this General Order. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorney mediators, and by the applicable rules pertaining to the mediator's profession for non-attorney mediators. Within seven calendar days after receiving notice of appointment, the mediator shall file with the court and serve on the parties to the mediation either (a) a statement that there is no basis for disqualification under subsection 4.3 and that the mediator has no actual or potential conflict of interest or (b) a notice of withdrawal. (Note: Rejection is provided for in Section 4.2.)

### **SECTION FIVE** **Mediation Costs**

#### Section 5.1 Mediation Costs

\_\_\_\_\_The parties and the mediator shall agree in writing upon the hourly rate for mediation which unless otherwise agreed shall be shared equally by the parties. The mediation costs shall be paid within thirty (30) days of the submission of the mediation invoice following the close of mediation.

#### Section 5.2 Party Unable to Afford Mediator

\_\_\_\_\_If the court determines that a party to a matter assigned to mediation cannot afford to pay the fees and costs of the mediator, the court may appoint a mediator to serve pro bono.

**SECTION SIX**  
**Mediation Procedures**

**Section 6.1**    **Advisement of Participants**

The mediator shall:

(1) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties; and

(2) advise the parties of all persons whose presence at mediation might facilitate settlement.

**Section 6.2**    **Mediation Session**

(a)    Mediation sessions shall not be open to the public.

(b)    All mediation sessions shall be controlled by the written Agreement of the parties and the mediator. The Agreement may not conflict with the provisions of this Rule.

**Section 6.3**    **Confidential Statement of Case**

The attorney for each side may submit to the mediator and shall do so at the mediator's request, a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation conference.

A confidential statement of the controversy may be supplemented by brochures, videos, and other exhibits or evidence . These supplemental materials shall be made available to opposing counsel at least five (5) days prior to the mediation. The confidential statement of the case shall at all times be held privileged and confidential from other parties unless an agreement to the contrary is provided to the mediator. In the mediation process, the mediator may meet

jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may not share revealed settlement authority with other parties or their representatives without consent of said party.

#### Section 6.4 Termination of Mediation

The mediator may suspend or terminate mediation whenever the mediator believes that continuation of the process would harm or prejudice one or more of the parties or whenever the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. At any time after two (2) sessions have been completed, any party may terminate mediation.

#### Section 6.5 Report of Mediation; Status

(1) Within ten (10) days after the completion or termination of mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part. If the parties do not reach any agreement as to any matter as a result of the mediation, the mediator shall report the lack of any agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2)(a) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters

the agreement shall be filed with the court only by agreement of the parties.

- (b) Any settlement which requires notice pursuant to Bankruptcy Rule 2002(a) shall not be effective until approved by the Court after notice and hearing.

## **SECTION SEVEN** **Confidentiality**

### Section 7.1 Protection of Information Disclosed at Mediation

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to: (a) views expressed or suggestions made by a party with respect to a possible settlement of the controversy; (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (c) proposals made or views expressed by the mediator; (d) statements or admissions made by a party in the course of the mediation; and (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation.

### Section 7.2 Discovery from Mediator

\_\_\_\_\_The mediator may not be compelled to disclose to the court or to any person any of the records, reports, summaries, notes, communications, or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this Section shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the court in writing, or from filing a final report as required by Section 6.5.

### Section 7.3 Protection of Proprietary Information

The parties, the mediator, and all mediation participants shall not during or after the mediation conference disclose appropriately identified proprietary information.

### Section 7.4 Preservation of Privileges

\_\_\_\_\_The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

## **SECTION EIGHT** **Sanctions**

### Section 8.1 Sanctions

\_\_\_\_\_Upon motion by either party and hearing, the court may impose appropriate sanctions against any attorney, or party representative who fails to comply with these mediation rules.

IN RE: Alternative Dispute Resolution

**GENERAL ORDER 2001-02**

It is SO ORDERED.

Dated: April 30, 2001

/s/  
\_\_\_\_\_  
Kent Lindquist, Chief Judge  
United States Bankruptcy Court

/s/  
\_\_\_\_\_  
Harry C. Dees, Jr., Judge  
United States Bankruptcy Court

/s/  
\_\_\_\_\_  
Robert E. Grant, Judge  
United States Bankruptcy Court