

**COMPENDIUM OF BANKRUPTCY COURT LOCAL RULES ON ADR**

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## INTRODUCTION

**In 2009, the author<sup>1</sup> compiled this work, an outline summarizing the contents of local rules concerning the use of mediation and other ADR processes in bankruptcy courts throughout the nation. Long a project on the bucket list of the ADR Committee of the American Bankruptcy Institute, its completion was greeted with great fanfare. This update in April of 2013 is the first comprehensive update since that time. When subsequent revisions or additions to local rules come to the author's attention, this work is periodically updated. However, despite best efforts and intentions, there is no guaranty of the accuracy of this work, and readers are advised to check the status of the local ADR rule in the specific jurisdiction in question.**

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<sup>1</sup> Jack Esher has served as a mediator and arbitrator in bankruptcy and commercial matters for more than 25 years. He presently serves as a primary mediator for derivative contract disputes in the *Lehman Brothers* case. After serving on the JAMS Mediator and Arbitrator Panel for ten years, he helped to establish the National Bankruptcy and Finance Panel at MWI. At MWI, Mr. Esher continues his pioneering advocacy for the use of ADR processes in bankruptcy proceedings, and has expanded his expertise into the areas of sophisticated financial transactions, securities, and complex commercial litigation. He is co-author of the American Bankruptcy Institute publication, *The ABI Guide to Bankruptcy Mediation* (2nd ed. 2009), and serves on the Register of Mediators for the Massachusetts and Delaware Bankruptcy Courts. Mr. Esher has been a member of the American Bankruptcy Institute for over twenty years, and was the Founding Chair of the ADR Committee of the ABI, serving in that position from 1994 to 2001.

## The 1<sup>st</sup> Circuit

1. **Maine** *LBR 9019-2*
  - a. ADR is not mandatory, but it is “authorized and encouraged”.
  - b. Parties may employ any ADR process at their own expense (including non-binding summary jury trial).
  - c. Court-annexed ADR is available
    - i. Judges or other qualified judicial officers available prior to hearing “to conduct early neutral evaluation and settlement conferences...”
    - ii. Voluntary and non-binding (unless parties agree otherwise).
    - iii. Court ordered settlement conference may be ordered by a bankruptcy judge.
    - iv. Rule provides confidentiality protections.
  
2. **Massachusetts** *LBR 7016-1; Standing Order 09-04*
  - a. At the agreement of all parties, the court may refer a matter to an ADR proceeding.
  - b. When this occurs, the parties must agree to:
    - i. The procedure for selection and compensation of the mediator
    - ii. The power and authority of the mediator
    - iii. The deadline for the mediator’s report
    - iv. Confidentiality protections
    - v. The court will not consider any motions filed for the purposes of extending deadlines, modifying obligations, or for to compel disclosure or discovery unless accompanied by certification that the moving party has made a reasonable and good faith effort to reach an agreement.
  - c. Under the Standing Order, a register of mediators is maintained by the Clerk of the Court. Mediators must be qualified under Massachusetts General Laws ch. 233, § 23C, and agree to handle no less than three *pro bono* mediations in a year, provided they are requested to so serve. The Court can order mediation over the objection of a party, notwithstanding LBR 7016.
  
3. **New Hampshire** *LBR 7016-1*
  - a. ADR will be discussed at preliminary pretrial conferences and the court will promote settlement efforts at every stage of the proceedings.
  - b. This rule purports to implement 28 U.S.C. §§ 651-658.
  - c. The court encourages parties to engage in ADR.
  - d. If the parties agree to participate in ADR, they may “contact the courtroom deputy for assistance.”
  - e. Either by the court or by agreement of the parties, any eligible civil action may be referred to mediation according to the Guidelines for Mediation Program.

4. **Puerto Rico**
  - a. There are no rules on file with regard to the use of ADR in Puerto Rico.
5. **Rhode Island:** *LBR 9019-2 reserved*
  - a. Rules acknowledge that there is no established procedure for the use of ADR.

### The 2<sup>nd</sup> Circuit

1. **Connecticut** *LBR 9019-2*
  - a. ADR may be used upon agreement of the parties.
  - b. Any adversary proceeding or contested matter may be referred to ADR at the agreement of the parties in the matter and the approval of the judge presiding over the case.
  - c. Before the matter is referred to mediation, the parties must agree to the form, the scope, the effect, and the provider of the ADR process.
  - d. When the parties come to an agreement, they must produce the “Stipulation for Reference to ADR.” This document must be approved and signed by the judge.
    - (1) This document must specify the form, the proceedings to be stayed, and the special conditions of ADR.
  - e. At the conclusion of the ADR process, the mediator must file a report to the judge, indicating whether the matter has been settled or not.
  - f. LBR 9019-2 provides confidentiality under the provisions of Fed. R. Evid. 408 and Fed. R. Civ. P. 68.
2. **New York ED** *LBR 9019-1*
  - a. Any “dispute arising in any case or proceeding” may be referred to mediation at the discretion of the court or at the “request of one or more parties in interest.”
  - b. Once the matter is referred to mediation, the parties will select a mediator and an alternate from the Mediation Register within seven (7) days of the referral. If the parties cannot agree to a mediator and an alternate, or if the court determines that its own selection is appropriate, then the courts will choose them.
  - c. The Mediation Register is maintained by the court. Individuals placed on the Mediation Register shall serve for a term of five years.
  - d. The mediator may, but shall not be required to, make a settlement proposal to the participants.

#### *To qualify a lawyer must:*

- i. Be in good standing with the law.
- ii. Not have been employed by the Court in the past 36-months.
- iii. Be a member in good standing of the New York state bar for at least 5 years.
- iv. Be admitted to practice in the Second Circuit.
- v. Have completed 12 hours of mediation training

- vi. Undertake a minimum of 5 *pro bono* assignments during a five year term.
- vii. Be certified by the Chief Judge.
- viii. File with the application original and current certificates of good standing from the department of the Supreme Court of New York Appellate Division in which he or she is admitted, and from one of the District Courts within the Second Circuit.

*To qualify a non-lawyer must:*

- i. Be authorized to practice for at least 5 years under the laws of the State of New York as a professional.
  - ii. Be a member in good standing, and submit to the clerk proof of his or her professional status, of any applicable professional organization.
  - iii. Have completed a mediation course(s) of at least 12 hours.
  - iv. Undertake a minimum of 5 *pro bono* assignments during a five year term.
  - v. Be certified by the Chief Judge.
- e. A mediator may be removed from the register at their own request or at the discretion of the Chief Judge.
  - f. After a mediator and alternate have been selected, the parties along with the mediator will submit a Mediation Order to the court.
  - g. This order will:
    - i. Describe the Mediation procedures.
    - ii. Include the compensation terms for the mediator.
  - h. The mediator and the parties agree on the time and location for the first mediation conference, the mediator sets the time and location for all conferences after that.
  - i. The parties may be required by the mediator to submit or exchange documents before the first mediation conference.
  - j. If a party is an individual, they must be present at each mediation conference. If a party is a government entity or group, they must have a representative, who has full settlement authority, attend each mediation conference.
    - i. The mediator may allow a participant to be in attendance through video or phone.
  - k. The mediator may make a settlement proposal to the parties. He then may set a deadline for the two parties to respond.
  - l. If a party fails to participate actively in the mediation process, the mediator will report it to the court. The report shall not be sent to the Judge presiding over the matter.
  - m. Regardless of whether the Parties come to a settlement or not, the mediator will write a report summarizing the conclusions of the process. This report will be filed with the court and served onto all parties.
    - i. After the mediator files this report, the process is suspended until further request by the court.

- n. The Court may stop the mediation process at any time if they feel that the process is “no longer appropriate.” Any party involved may also file a motion to withdraw with the court.
  - o. Any oral or written statements made by the mediator, the parties, or others during the mediation conference shall not be disclosed by any of the mediation participants.
    - i. The rule also protects confidentiality under “Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent” relating to confidentiality.
  - p. The mediator will be compensated in a way that was agreed to by the mediator and all parties. If the parties and mediator fail to come to an agreement then the court will set the terms and conditions of compensation. It is possible that the court will ask the mediator to serve on a *pro bono* basis.
3. **New York ND LBR 9019-2 (Appendix II)**
- a. The mediator may, among other things, suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, and stimulate negotiations between opposing sides.
  - b. A matter can only be assigned to mediation at the order of the Court. The court may do this *sua sponte*, at the motion of a single party in the matter, or at the stipulation of all parties in the matter.
  - c. Unless otherwise ordered by the court, the assignment to mediation does not delay or stay discovery, pretrial, hearing dates, or trial schedules.
  - d. The Clerk of the Bankruptcy Court maintains a Panel of certified mediators.
  - e. In order to be listed on the Panel, one must apply to the clerk’s office, have completed eight hours of mediation training, and state any removal from any professional organization.
    - i. The court will then review and either accept or deny the application.
    - ii. Once a mediator is appointed to the register, they must confirm their qualifications annually.
  - f. Mediators must sign a written oath and adhere to American Arbitration Association standards.
  - g. Once a matter has been assigned to mediation, the parties have fifteen (15) days to select a mediator and an alternate and notify the court.
  - h. If their selection is not listed on the Panel, the parties must also submit a document that acknowledges the mediator is not on the Panel but still qualified to serve.
    - i. This document must be signed by both parties.
    - ii. After these submissions, the court will either accept or reject the parties’ choices.
  - i. The rule also states that a mediator is held to 28 U.S.C. §§ 144 and 455 and therefore may be disqualified for bias or prejudice.
  - j. Mediators will serve on a *pro bono* basis if the mediation does not exceed six (6) hours of mediation.

- i. If the mediation goes on longer than six (6) hours, the mediator can consent to serve on a *pro bono* basis.
    - ii. If the mediator does not consent to do so, then the parties and the mediator must agree to the terms of compensation. Compensation is not to exceed \$150 an hour.
  - k. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney who has responsibility for the parties' case.
    - i. The mediator shall schedule a convenient time and place for the mediation conference, and give all counsel and pro se parties at least 14 calendar days' written notice of the time and place to be utilized for the mediation.
    - ii. A party may only be excused if the mediator and all parties involved agree that the person does not need to attend.
    - iii. Court may impose sanctions for failure to attend.
  - l. This rule provides confidentiality protections.
  - m. The mediator is not required to make settlement recommendations, but may if they feel it will aid in the process.
  - n. At the conclusion of the process, the mediator will file a report with the court, limited to reporting on compliance with the Rule and whether settlement was reached, without disclosure of substance of communications.
4. **New York SD LBR 9019-1 & Bankruptcy Court General Order M-390**
- a. A matter may be assigned to mediation at the order of the court, or at the motion by any party involved in the matter.
  - b. The Court Clerk will maintain a Register of qualified mediators.
  - c. To qualify to be placed on the Register one must:
    - i. Apply to the Court.
    - ii. Have been a member in good standing of the bar in any state for at least five (5) years.
    - iii. Be admitted to practice in the Southern District of New York.
    - iv. Be certified by the Chief Judge to be a competent mediator.
  - d. In order to serve in matters where "the court has determined the need for special skills," one must:
    - i. Be admitted to practice for at least four (4) years as a professional under New York law.
    - ii. Be a member in good standing of the applicable professional organization.
    - iii. Not have been suspended or resigned from the applicable professional organization.
    - iv. Not have been convicted of a felony.
  - e. A person may be removed from the register at their own discretion or upon the order of the court.

- f. Once a matter is referred to mediation, the parties must agree to a mediator from the Register. If they cannot agree within 7 days of assignment to mediation, the court will appoint one.
  - g. A mediator may be barred from serving on a matter as provided in 28 U.S.C. § 455.
  - h. The mediator and the parties will agree to a time and location for the first conference. The mediator will then set the time and location for every conference after that.
  - i. A representative, with full settlement authority, from each party must attend the conferences.
  - j. The mediator has no obligation to “make written comments or recommendations.”
  - k. At the conclusion of the process, the mediator will file a report with the Court stating the conclusions of the mediation process.
  - l. The mediator will be compensated on the terms agreed to be the parties and the mediator. If an agreement cannot be reached, the court will decide the terms of compensation.
  - m. The confidentiality of the process is protected under Rule 408 of the Federal Rules of Evidence.
  - n. The General Order provides for voluntary arbitration of matters, and allows a mediator to shift to arbitration with the consent of the parties, provided the mediator is trained to do so.
  - o. ADR shall be conducted in the manner required by any applicable standing order of the court.
5. **New York WD**
- a. There are no rules on file with regard to the use of ADR in the Western District of New York.
6. **Vermont *LBR 9019-1***
- a. “The court encourages the use of ADR where the parties believe the issues may be resolved through a non-adversarial process.”
    - i. The court may direct the use of ADR in cases it deems to be well-suited to non-judicial resolution. The courtroom deputy coordinates the use of ADR in bankruptcy matters.
  - b. *LBR 9019-1* also makes the District Court’s Early Neutral Evaluation (ENE) rules applicable to bankruptcy matters.
    - i. If all parties agree or if the court orders, a matter may be referred to ENE.

### The 3<sup>rd</sup> Circuit

- 1. **Delaware *LBR 9019-2; 9019-3; 9019-4; 9019-5; 9019-6***
  - a. Court may refer dispute to mediation and if parties consent, to arbitration (both binding and non-binding).



- b. Mediator must be certified through a program which includes a bankruptcy component and must be qualified and designated under the “Register of Mediators”.
- c. Both civil and bankruptcy procedure rules apply to subpoenas for the attendance of witnesses and the production of documents.
- d. Within 30 days after an arbitration award any party may file a demand for a determination *de novo*. Action will then be restored to the docket and treated as if it had not been referred to arbitration.
- e. Unless otherwise ordered assignment to mediation does not delay or stay, discovery or trial schedules.
- f. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney who has responsibility for the parties case
  - i. Court may impose sanctions for failure to attend.
  - ii. The court may excuse a person’s attendance.
- g. Mediator cannot be compelled to disclose information to anyone outside the mediation conference.
- h. Mediator is not required to prepare written comments for the judge or parties.
  - i. However mediator must produce a mediators report listing the number of hours spent in the conference and other statistical information on a form provided by the court.
- i. Court maintains a register of qualified mediators. Mediators apply by sending in a statement of qualifications which must be reaffirmed each year. Mediators may be removed from the list either at their own request or by court order, in which case a mediator is again eligible to reapply once one year has passed.
- j. Parties may select a mediator from the register; if they are unable to decide then the court chooses.
- k. There is no liability for the mediator absent fraud or unethical conduct.
- l. Compensation must be reasonable and is subject to judicial review. If estate is charged prior court approval is necessary.
  - i. If the parties cannot afford a mediator, court may appoint a mediator to serve *pro bono*.
- m. *See Court’s Standing Order of April 7, 2004, as revised* - For all claims to avoid preferential transfers, mediation is **mandatory**.
  - i. Parties have 120 days after an answer is filed to file an “Order Assigning Adversary Proceeding to Mediation.”
  - ii. If the parties fail to meet the deadline court will appoint a mediator.
  - iii. The bankruptcy estate (or plaintiff if there is no estate) must pay mediation costs.
  - iv. During mediation, the parties may stipulate to allow the mediator, if qualified as an arbitrator, to hear and arbitrate the dispute.
  - v. Not less than 7 days prior to the date of mediation, each party shall submit directly to the mediator a submission of materials for which the mediator has requested. The mediator’s request for these materials must be delivered no less than 14 days prior to the date of mediation.

- n. Rule 9019-5 (j), new in 2013, provides an alternative procedure for mandatory preference mediation, which is elective for the parties and provides more detailed mediation procedures and timelines while deferring discovery and other scheduled filings until the mediation is concluded. A more streamlined procedure is provided for cases under \$75,000.
2. **New Jersey LBR 9019-2**
- a. Clerk maintains a register of qualified mediators.
  - b. Mediator is made eligible by filing an application of appointment demonstrating qualifications, and completing any training required by the court.
  - c. If the parties are unable to agree on a mediator and an alternate, the court appoints both the mediator and alternate.
  - d. Mediators are compensated at a rate of \$200 per hour. Parties may agree on more with the approval of the court.
  - e. Court may refer a matter to mediation.
  - f. Each party must prepare an information statement containing, *inter alia*, the principal rules of law upon which the party will rely at trial.
  - g. Attendance is required by all attorneys. Only parties residing within the court's jurisdiction are required to attend.
  - h. Upon completion the mediator shall inform the court in writing whether the parties have reached an agreement.
3. **Pennsylvania ED LBR 9019-2; 9019-3**
- a. Any matter arising in a case, other than a proceeding subject to compulsory arbitration may be assigned for mediation.
  - b. Chief Judge has the power to certify mediators.
  - c. Attorney applicant may be chosen if: 1) he has served as a mediator on a regular basis and 2) has been involved for 3 years as a counsel of record in bankruptcy cases or has at least 3 years involvement with the particular subject matter before the court.
  - d. Non-attorney applicant may be chosen if: 1) he has served as a mediator on a regular basis or has participated in or is willing to participate in formal mediation training and 2) has been involved for 3 years as a professional in bankruptcy cases or has at least 3 years involvement with the particular subject matter before the court.
  - e. Mediator is paid \$150 an hour with the first 4 hours done *pro bono*.
  - f. Sessions are held at the courthouse unless the mediator decides otherwise.
  - g. A trial or hearing will not be automatically continued to accommodate mediation.
  - h. No later than 3 days before the first session parties must produce a 2 page mediation memo summarizing the nature of the parties' position.
  - i. Attendance is required by all attorneys. Only parties residing or having their principal place of business in the Eastern District of Pennsylvania are required to be present.

- j. Mediator shall file mediation report no later than 14 days following the conclusion of the mediation.
4. **Pennsylvania MD LBR 9019-2**
- a. Court may assign to mediation any case.
  - b. Person may be certified as a mediator if he has been a member of the state bar for at least 5 years, is admitted to practice before the court, has completed a recognized training program, and he or she has been determined to be competent enough to perform the duties of mediator.
  - c. Each individual must take the oath or affirmation prescribed by 28 U.S.C. § 453.
  - d. Mediator provides services *pro bono* for the first 4 hours of a session unless otherwise ordered by the court; thereafter, parties can agree to continue at the mediator's reasonable rate, sharing the cost pro rata.
  - e. The court, not the parties, chooses the mediator.
  - f. No later than 7 days before the first session parties must produce a 2 page mediation memo summarizing the nature of the parties' position.
  - g. Attendance by all parties is required unless excused by the mediator.
5. **Pennsylvania WD LBR 9019-2; Bankruptcy Court General Order 97-4 and Court Procedure Manual**
- a. Court may assign any matter deemed relevant to mediation.
  - b. Assignment of matter to mediation does not delay hearing dates or trial schedules.
  - c. Mediation applicants must submit a statement of professional qualifications and reveal any past misconduct and must reaffirm annually. Applicants must agree to accept at least 1 *pro bono* assignment per year.
  - d. Court selects 3 mediators from register and parties agree on one mediator and one alternate. If parties cannot agree on mediator and alternate by the designated deadline, the court will decide on both.
  - e. There is no liability for the mediator absent fraud or unethical conduct.
  - f. Compensation must be reasonable and is subject to judicial review.
    - i. If it is determined that a party can't afford mediation, the court will appoint a mediator *pro bono*.
  - g. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney who has responsibility for the parties case.
    - i. Court may impose sanctions for failure to attend.
  - h. Mediator is not required to prepare written comments or recommendations to the parties.
  - i. Mediator must produce a mediators report listing the number of hours spent in the conference and other statistical information on a form provided by the court.
  - j. Before serving as a mediator, one shall take the necessary oath or affirmation.
6. **Virgin Islands LBR 9019-2**
- a. The Court Procedures Manual shall govern mediation procedures.

## The 4<sup>th</sup> Circuit

1. **Maryland** *LBR 9019-2*
  - a. Maryland has a Bankruptcy Dispute Resolution Program (BDRP).
  - b. All controversies are eligible for BDRP except employment and compensation of professionals, compensation of trustees and examiners, matters involving sanctions, and objections to discharge under 11 U.S.C. § 727 (unless there has also been filed an objection to discharge ability under § 523).
  - c. Court maintains a panel of “resolution advocates.”
  - d. Applicants must agree to serve for at least one year and take on at least one *pro bono* matter every 6 months.
  - e. As a general rule parties choose whether or not a case is assigned to BDRP, but the Court may refer a matter to BDRP *sua sponte*.
  - f. The parties choose a resolution advocate (mediator) and an alternate. If the parties do not agree on the mediator, or the judge deems it necessary for the court to select its mediator, the judge will select the mediator.
  - g. No later than 8 days prior to the BDRP conference parties must submit a BDRP statement to the advocate (no longer than 10 pages) describing the substance of the dispute.
  - h. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney who has responsibility for the parties case.
  - i. Court may impose sanctions for failure to attend.
  - j. Advocate has no obligations to make any written comments or recommendations.
  - k. Advocate must produce a report listing the number of hours spent in the BDRP conference.
  - l. If the proposed compensation to the advocate is more than \$3,000 a notice for an award of final compensation must be filed, and parties are given the opportunity to object to the payment within 21 days of the filing of this notice.
  - m. If the proposed compensation to the advocate is \$3,000 or less, there is no need for further court order to authorize payment to the advocate.
  
2. **North Carolina ED** *LBR 9019-2*
  - a. Court may order mediation in any adversary proceeding or contested matter.
  - b. Within 14 days after order a party may move to dispense the conference.
  - c. Parties may select a mediator certified pursuant to the rules of the Supreme Court of North Carolina. Plaintiff should submit notice of who the mediator will be to the court within 14 days of the court’s order requiring mediation.
  - d. Mediated settlement conference shall not delay other proceedings in the case.
  - e. The court does not maintain a group of eligible mediators.
  - f. Unless otherwise agreed the conference takes place in the Bankruptcy Courthouse.
  - g. The court determines a deadline for the completion of the conference.
  - h. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney for each party.

- i. Court may impose sanctions for failure to attend.
  - j. Mediator must submit a report to the judge which indicates the results of the conference.
  - k. Compensation is agreed upon between the mediator and the parties. If the mediator is appointed by the court he/she is compensated by an hourly rate set by the judge.
3. **North Carolina MD LBR 9019-2**
- a. Court may order mediation in any adversary proceeding.
  - b. Within 14 days after order a party may move to dispense the conference.
  - c. Parties may select a mediator certified pursuant to the rules of the Supreme Court of North Carolina. Plaintiff shall file with the court within 21 days of the court's order the two parties' agreed to decision on the mediator.
  - d. The court does not maintain a group of eligible mediators.
  - e. Unless otherwise agreed the conference takes place in the Bankruptcy Courthouse.
  - f. The court determines a deadline for the completion of the conference.
  - g. Attendance is required of each party that is a natural person (if not a natural person then a representative), and the attorney who has responsibility for the parties case.
  - h. Court may impose sanctions for failure to attend.
  - i. Mediator must submit a report to the judge which indicates the results of the conference.
  - j. Compensation is agreed upon between the mediator and the parties. If the mediator is appointed by the court he/she is compensated by an hourly rate set by the judge. If there are multiple participants, people represented by the same counsel will pay one half of the entire mediator fee so that the fee is still split in equal shares by each party to the dispute.
4. **North Carolina WD**
- a. There are no rules on file with regard to the use of ADR in the Western District of North Carolina.
5. **South Carolina LBR 9019-2**
- a. If a party believes that mediation would be a cost-effective and time-efficient alternative to litigation, they may file and serve on all other parties a motion to have an adversary proceeding referred to mediation. In judge's discretion, other contested matters may also be referred to mediation.
  - b. All other parties then have ten (14) days to file an objection to the motion.
  - c. The judge presiding over the matter will consider the request and any objections and then decide whether or not mediation is an appropriate solution.
  - d. A judge may also refer a matter to mediation, without the request of any party, if he/she feels as though it is suitable for the case.
  - e. Once a matter is referred to mediation, the trial schedules may be stayed by the court in order to facilitate the mediation process.

- f. The mediator is agreed upon by all parties and must be either:
    - i. On a list of mediators approved by the Court, or
    - ii. Otherwise qualified by training or experience to mediate and agreed upon by the parties.
  - g. The mediation must be concluded within thirty (30) days of the order appointing a mediator. At this time, the mediator has seven (7) days to report to the court the outcomes of the process.
6. **Virginia ED LBR 9019-1**
- a. Litigants in all adversary cases are advised of the availability of mediation and may request it.
  - b. Parties may select any mutually acceptable non-judicial mediator.
  - c. Mediators may not be compensated by contingent fee.
  - d. All district, magistrate, and bankruptcy judges are authorized to act as mediators.
  - e. Appointment of a mediator does not stay the scheduling of any case.
7. **Virginia WD**
- a. There are no rules on file with regard to the use of ADR in the Western District of Virginia.
8. **West Virginia ND**
- a. There are no rules on file with regard to the use of ADR in the Northern District of West Virginia.
9. **West Virginia SD LBR 9019-2**
- a. Parties must participate in good faith when the court permits or requires mediation of any issue or dispute.
  - b. The terms and conditions of mediation will be governed by a mediation scheduling order.

## **The 5<sup>th</sup> Circuit**

- 1. **Louisiana ED LBR 9019-2**
  - a. Court has discretion to refer a case to private mediation if the parties consent.
  - b. Chief Judge can order non-binding mini-trial or summary jury trial by any judicial officer with or without the parties' consent.
  - c. May employ other ADR programs that may be designated for use in this district by the district court.
- 2. **Louisiana MD**
  - a. The U.S. Bankruptcy Court of the Middle District of Louisiana does not have any local rules pertaining to ADR or mediation.
- 3. **Louisiana WD Bankruptcy Court Voluntary Mediation Program**
  - a. ADR is voluntary and therefore all parties must request that a matter be referred to mediation.

- i. Once all parties request a referral, the court must approve their request.
  - b. If the judge approves the parties' request, then the parties will choose a mediator and an alternate from the Mediation Register. If the parties cannot agree on a mediator and alternate, the court will appoint them.
    - i. The mediator then has seven days to either accept or reject the assignment. If the mediator cannot serve the alternate serves.
  - c. The mediation register will be maintained by the court clerk. In order to be on the list a person must:
    - i. Apply
    - ii. Meet these qualifications:
      - (1) Must be licensed under the laws of Louisiana for at least four years as a recognized professional.
      - (2) Be in good standing with any applicable professional organization.
      - (3) Completed a Louisiana state certified mediation training course of at least 12 hours or qualify as a mediator under another state mediation program.
      - (4) The person shall not be or have been:
        - (a) Suspended, disbarred, or had a license revoked from an applicable professional organization.
        - (b) convicted of a felony
    - iii. Be approved by the administrator.
  - d. The time and location of the mediation conferences are set by the mediator.
  - e. All communications made in connection with the mediation are confidential and shall not be disclosed to anyone without the specific authority of the parties involved. No statements or communications may be used by any party with regard to subsequent litigation or trial.
  - f. If at least on party demonstrates financial need, mediation is available on a *pro bono* basis. This does not preclude the other parties from agreeing to compensate the mediator.
  - g. If no party has financial need, the parties will agree to the compensation for the mediator.
  - h. The parties will share the compensation equally unless otherwise agreed upon.
4. **Mississippi ND LBR 9019-1**
- a. When appropriate, mediators may offer objective evaluations and may make settlement recommendations.
  - b. The determination of whether a matter should be referred to mediation is addressed to the sound discretion of the judicial officer assigned to the case.
  - c. A bankruptcy judge may refer a case to mediation on the judge's own motion. Any objection by a party must be filed in writing within 14 days of the entry of the referral order.
  - d. A party may also request mediation by filing its own motion.
  - e. All objections by the parties to distributed pre-mediation documents must be filed, addressed to the mediator, not less than 7 days prior to the scheduled mediation session.

- f. Every neutral must file with the court an oath or appropriate affirmation upon appointment.
  - g. Neutrals may require reasonable fees and charges for services and expenses.
5. **Mississippi SD 9019-1**
- a. When appropriate, mediators may offer objective evaluations and may make settlement recommendations.
  - b. The determination of whether a matter should be referred to mediation is addressed to the sound discretion of the judicial officer assigned to the case.
  - c. A bankruptcy judge may refer a case to mediation on the judge's own motion. Any objection by a party must be filed in writing within 14 days of the entry of the referral order.
  - d. A party may also request mediation by filing their own motion.
  - e. The court may not refer a case to mediation more than one time, except under exceptional circumstances or by the request of the parties.
  - f. All objections by the parties to distributed pre-mediation documents must be filed, addressed to the mediator, not less than 7 days prior to the scheduled mediation session.
  - g. In the event any of the compensation of the mediator is to be paid by the estate, the court also shall consider and approve the rate of compensation of the mediator and the allocation of costs between or among the parties in the order appointing the mediator.
6. **Texas ED**
- a. There are no rules on file with regard to the use of ADR in the Eastern District of Texas.
7. **Texas ND LBR 9019-2**
- a. Judge may refer a case to ADR on the motion of any party, or agreement of the parties, or on the court's own motion and may order the parties to bear expenses in such proportion as the presiding judge sees appropriate.
8. **Texas SD LR16.4**
- a. Prior to a case's initial conference, counsel are required to discuss with their client and the opposing counsel their views on the appropriateness of ADR in the given case.
  - b. At the pretrial conference, the judge may suggest or even order ADR and mediation upon the parties.
  - c. A party opposing an ordered ADR session must file a written objection to participate within 14 days of the order being placed.
  - d. The Court shall maintain a Standing Panel on ADR Providers ("Panel") to oversee implementation, administration, and evaluation of the Court's ADR program. The Chief Judge of the District will appoint three members, one of whom shall be a district judge who shall serve as chairperson. Each Panel member shall be appointed for a three year term. Panel shall review



applications from prospective ADR providers and annually shall prepare an ADR List of those qualified under the criteria contained in this rule. Applicants to this panel must be active members of the bar of the US Bankruptcy Court for the SD of Texas, must have been licensed to practice law for at least 10 years, and must have completed at least 40 hours of dispute resolution training.

- e. Within 14 days of completion of the proceeding, the parties must jointly file a memorandum stating the outcome and fees that were associated.

9. **Texas WD** *LBR Appendix L – 10001-1*

- a. Upon order of the court each party submits reports evaluating whether ADR is appropriate
  - i. If appropriate parties then decide on ADR method, choose a neutral, and decide on compensation.
  - ii. Court will defer to the choices of the parties unless the court finds another method better suited to the matter.
- b. Court may order non-binding arbitration, early neutral evaluation, mediation or mini-trial.
- c. Representatives with the authority to negotiate or persons who are necessary to a negotiation must attend the sessions.
  - i. Those who do not attend are subject to sanctions
- d. A list of neutrals approved by the Court will be sent to both parties, who will then be asked to strike off one name each from the list. The remaining neutral on the list will serve as mediator. If the parties are not able to choose themselves, the Court has the power to decide upon the mediator.
- e. At the conclusion of each ADR session, the neutral shall submit to the Court a report stating the outcome.

## **The 6<sup>th</sup> Circuit**

1. **Kentucky ED**

- a. There are no rules on file with regard to the use of ADR in the Eastern District of Kentucky.

2. **Kentucky WD**

- a. There are no rules on file with regard to the use of ADR in the Western District of Kentucky.

3. **Michigan ED** *LBR 7016-2*

- a. Not mandatory.
- b. The Court may order mediation, the parties may stipulate to it, or a party may make a motion for mediation. If the Court orders mediation, the parties have 7 days to object.
- c. Upon entry of the mediation order, the mediation shall be completed within two weeks, unless the judge otherwise specifies.
- d. Unless otherwise ordered by the court, each of the parties to the mediation

process shall pay \$200.00 to the mediator before or at the commencement of the mediation session. The mediator, with the consent of the parties, may retain professionals to assist the mediator. The expenses of such professionals shall be equally paid by all parties to the mediation and shall not exceed \$2,000.00, unless otherwise ordered by the court.

- e. The parties each pay the mediator a fee of \$200 at the beginning of the mediation.
  - f. Nothing said, discussed or written in connection with the facilitation is admissible in Court.
  - g. Mediator is impartial, and is responsible for the process to guide the parties and their counsel to a resolution of the dispute. The mediator may make a recommendation for settlement, but it is non-binding.
  - h. Mediation is non-binding in general, unless reduced to a written settlement.
  - i. Court appoints a mediation panel from which parties choose mediators.
  - j. Before being appointed to the panel, a prospective mediator must participate in a court-approved ADR training seminar.
  - k. Within 7 days after the mediation session, the mediator must submit to the court a certification demonstrating that there has been compliance with the mediation requirements of this rule, and what the outcome of the mediation was.
4. **Michigan WD LBR 9016-1**
- a. The court favors the use of ADR and requires a pre-session discussion between the parties to discuss and decide upon the method of ADR to be utilized.
  - b. Parties electing to use ADR are solely responsible for any associated fees, which should be split proportionally.
5. **Ohio ND LBR 9019-2** (*Court adopts the District Court's local rule on ADR, which contains the following provisions*):
- a. ADR is available in adversary proceedings or contested matters. ADR shall be governed by Local Civil Rules 16.4 through 16.10. (Last revised April 7, 1997)
  - b. Alternative Dispute Resolution program provides the following options:
    - i. **Arbitration**: An arbitrator decides the rights and obligations of the parties. It is arranged by the court and non-binding.
    - ii. **Early Neutral Evaluation**: A neutral evaluator facilitates the pre-trial process to make it more efficient and, if possible, settle all or part of the case. The program provides the parties with a neutral evaluation of the legal and factual issues at an early stage.
    - iii. **Mediation**: A neutral mediator facilitates the negotiation process.
    - iv. **Summary Jury Trial**: The parties briefly present their case to a jury, with a judicial officer presiding, and then use the decision of the jury and the jurors' reactions to the arguments as an aid to settlement.

- v. **Summary Bench Trial:** Like a summary jury trial, except the parties use the decisions and reactions of a judicial officer rather than those of a jury.
  - c. An ADR administrator oversees the ADR programs.
  - d. A Federal Court Panel consists of lawyers with at least five years of experience who are qualified to act as mediators, arbitrators, evaluators, etc.
  - e. Appointments to the panel are for a period of three years.
  - f. No compensation to mediators and evaluators for the first 4.5 hours of services. Thereafter, the parties are equally responsible for compensating the mediator at \$150 an hour.
6. **Ohio SD LBR 9019-2**
- a. The judge may order mandatory mediation in adversary proceedings.
  - b. A party may request to proceed before a settlement judge, and the judge may grant such a request.
  - c. When a settlement judge is appointed, the parties file statements of their positions with the settlement judge. These statements are not entered in the case file, and the trial judge does not see them.
  - d. At the conference with the settlement judge, the judge may provide his or her own opinion on the facts or legal issues and may attempt to facilitate settlement.
  - e. All statements and documents used during the procedure are confidential.
7. **Tennessee ED LBR 9019-2**
- a. The court may, with the judge's discretion and with or without the consent of the parties, refer any adversary proceeding to mediation.
  - b. Mediation may be withdrawn at any time by the presiding judge at the judge's own discretion, should the judge feel that the matter is no longer suitable for mediation.
  - c. Once an order has been entered directing the parties to participate in mediation, the parties will be required to do so unless the court also files a withdrawal of the order.
  - d. A neutral who has engaged as a mediator may not serve as counsel to one party in the same or a similarly related matter.
  - e. Mediators will be compensated at rates that should be agreed to and borne equally by the parties.
  - f. Within 7 days of completing the mediation conference, the mediator shall submit a report as to the outcome of the mediation session.
8. **Tennessee MD LBR 9019-2 and "The ADR Program"**
- a. Upon motion or by the Court's initiative, any contested matter or adversary proceeding may be referred for a judicially conducted settlement conference, mediation, or non-binding arbitration. *Consent of the parties is not required.*
  - b. The Court uses the ADR panel qualified by the District Court for its ADR program.

- c. If the parties cannot agree on the selection of an ADR neutral, the Court will pick three neutrals at random, and each party can strike one of the three neutrals. The Court then appoints the remaining neutral.
- d. Compensation rates for the neutral are agreed upon by the parties or ordered by the Court.
- e. A judicially conducted settlement conference is conducted by a bankruptcy judge who is not the trial judge.
- f. Parties submit settlement statements to the settlement judge and mediation statements to mediators.
- g. Ten days after mediation, the mediator submits a report indicating whether the matter settled, whether the mediation was continued, or whether the mediation was terminated without settlement. No other information may appear in the mediator's report.
- h. Non-binding arbitration provides the parties with a written decision stating the prevailing party and the amount of damages.
- i. Five days before an arbitration conference, the parties submit to the arbitrator and to each other a written analysis of their claims and defenses.

**9. Tennessee WD**

- a. There are no rules on file with regard to the use of ADR in the Western District of Tennessee.

**The 7<sup>th</sup> Circuit**

**1. Illinois CD**

- a. Although the Illinois Central District Court Rule No. 16.4 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

**2. Illinois ND *LBR 9060***

- a. A party may file a motion to request an order referring the dispute to mediation.
- b. If the parties cannot agree on a mediator, the motion can contain the names of those mediators either party wishes to exclude.
- c. Referral to mediation does not stay ordinary pre-trial procedures.
- d. Mediator must give at least seven days' notice prior to the initial mediation conference, and may request statements from the parties.
- e. The mediator presides over the conference and determines its nature and procedures.
- f. Parties agree on compensation of the mediator.
- g. Mediation proceedings are confidential.
- h. No discovery is allowed in relation to mediation proceedings.
- i. Except as the mediator may specify, rules of evidence and procedure should not apply to the mediation process.
- j. Within 7 days after conclusion of mediation, the mediator must provide a report to the parties and to the court, which is to include information on the outcome of the case.

3. **Illinois SD**
  - a. There are no rules on file with regard to the use of ADR in the Southern District of Illinois.
4. **Indiana ND LBR B-9019-2**
  - a. The court may, on its own initiative, or upon a motion, refer an adversary proceeding or contested matter to a non-binding form of ADR. The parties may agree to make the ADR binding.
5. **Indiana SD LBR B-9019-2**
  - a. The Court may refer a contested matter to mediation, or a party may file a motion seeking such referral.
  - b. Any motion should be accompanied with a proposed order setting out the filing deadlines or hearings that may need to be rescheduled to accommodate the mediation.
  - c. Any person selected by a judge can be a mediator, subject to the same disqualification rules that apply to judges.
  - d. The mediator controls all procedural aspects of the mediation.
  - e. Willful failure to attend a mediation proceeding can result in sanctions.
  - f. Mediation proceedings are entirely confidential.
  - g. Unless otherwise ordered by the court, the parties are 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.
  - h. If the parties cannot agree on a mediator, a striking process will take place where the court picks three mediators and each party has the chance of striking one from possibility of serving as mediator. The third and remaining option will serve as mediator.
  - i. Prior to serving as mediator, a person must take the necessary oath or affirmation as would a judge.
6. **Wisconsin ED**
  - a. There are no rules on file with regard to the use of ADR in the Eastern District of Wisconsin.
7. **Wisconsin WD**
  - a. Although the Wisconsin Western District Court Rule No. 16.6 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

## The 8<sup>th</sup> Circuit

1. **Arkansas ED**
  - a. There are no rules on file with regard to the use of ADR in the Eastern District of Arkansas. All matters not specifically dealt with through the district's local

bankruptcy rules are governed by the applicable Federal Rules of Bankruptcy Procedure.

2. **Arkansas WD Local Rule 1001-1**

There are no rules on file with regard to the use of ADR in the Western District of Arkansas. All matters not specifically dealt with through the district's local bankruptcy rules are governed by the applicable Federal Rules of Bankruptcy Procedure.

3. **Iowa ND**

a. Although the Iowa Northern District Court Rule No. 16.3 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

4. **Iowa SD**

a. Although the Iowa Southern District Court Rule No. 16.3 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

5. **Minnesota**

a. Although the Minnesota District Court Rule No. 16.5 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

6. **Missouri ED LBR 9019-1**

- a. Mediation on the Court's own motion or on motion of a party.
- b. The mediation order may:
  - i. designate a trial date;
  - ii. require the parties to agree on a mediator within seven days, or to propose and file a list of three mediators from which the Court may choose;
  - iii. within 14 days of the order, require the plaintiff or movant to file a memorandum with the Court advising it of the date scheduled for mediation and the name of the mediator; and
  - iv. direct that the mediator file a mediation report no later than five days after conclusion of the mediation.
- c. Compensation of the mediator is determined by the mediator and the parties.
- d. Referral to mediation does not stay pre-trial proceedings, unless otherwise specified.
- e. Five days before the mediation, the parties must submit mediation statements to the mediator.
- f. Mediations and mediation reports are entirely confidential.
- g. No later than 7 days after the mediation, the mediator shall submit their report to the parties and to the Court advising whether the matter was settled. If unresolved, the mediator shall make no further statements about the case, and the matter then goes before the Court.

- h. No more than 14 days after the mediation, the parties shall submit a stipulation of settlement or joint motion for approval of the settlement.

**7. Missouri WD**

- a. Although the Missouri Western District Court Rule No. 16.5 refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases. The District Court Rule does, however, mention that the presiding judge in any civil action may require the litigants to participate in an alternative dispute resolution process at any stage of the litigation deemed appropriate.

**8. Nebraska**

- a. Although the Nebraska District Court Rule does have a District Court Mediation Plan and it refers to bankruptcy, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

**9. North Dakota**

- a. North Dakota District Court Rule No. 16.2 makes reference to adversary proceedings in bankruptcy cases.

**10. South Dakota**

- a. There are no rules on file with regard to the use of ADR in South Dakota.

**The 9<sup>th</sup> Circuit**

**1. Alaska**

- a. Local Bankruptcy Rule 1001-1 makes District Court Local Rule 16.2 applicable to all matters, actions, and proceedings before the Bankruptcy Court.

**2. Arizona *LBR 9072-1 through 9072-9***

- a. Any adversary proceeding, contested matter, or other dispute may be assigned for inclusion in the ADR program:
  - i. At the discretion of the court.
  - ii. At the agreement of the parties involved.
  - iii. On the motion of a party to the matter or the United States Trustee.
- b. The assignment of a matter to ADR does not delay or stay discovery, pretrial, hearing dates, or trial schedules.
- c. The clerk will maintain two lists of attorneys and panel trustees qualified and approved by the court to serve as mediators.
- d. In order to be on one of these lists, a person must:
  - i. Apply
  - ii. Meet the following qualifications:

- (1) If the applicant is an attorney, be a member in good standing of the bar of any state or the District of Columbia, with at least 5 years of practice.
  - (2) If the applicant is an attorney, be a member in good standing of the bar of the Federal District Court of Arizona, with at least 5 years of practice.
  - (3) If the applicant is a panel trustee, be in good standing with the office of the United States Trustee with at least five years of service.
  - (4) Not have been suspended or had a license revoked.
  - (5) Not have resigned from a professional organization or panel while an investigation was pending into allegations of misconduct which would warrant suspension, disbarment, or professional license or bond revocation.
  - (6) Not have been convicted of a felony.
  - (7) Have completed appropriate mediation training.
  - (8) Be approved by the court.
  - (9) Be willing to serve in one mediation matter at least one time every quarter year.
- e. Mediators shall serve a term of three years.
  - f. Within seven days of the assignment of a matter to ADR, the parties shall agree to a mediator and an alternate mediator and shall report to court their selections.
  - g. If their selection is not from the panel they must have it approved by the court.
  - h. If the parties cannot agree within 14 days, the court will choose the mediator and alternate.
  - i. The parties shall agree to the terms of compensation for the mediator. If they cannot agree, then the court will set the terms.
  - j. If one party is unable to pay, the mediator will serve *pro bono* for that party. In order to serve *pro bono*, the mediator is not required to have undergone mediation training.
  - k. The mediator shall have a telephone conference with the counsel of each of the parties within 14 days of the initial meeting to discuss:
    - i. The date and place for the conference.
    - ii. The procedures for the conference.
    - iii. The parties who will attend.
      - (1) Each party who is a natural person must attend.
      - (2) If the party is not a natural person, they must send a representative with full settlement authority.
      - (3) The attorney who is responsible for each party's case must attend as well.
      - (4) However, a person may be excused for good reason.
    - iv. The materials and submissions that must be made to the mediator.
    - v. Any issues that might arise.



- l. After that telephone conference and at least 7 days prior to the mediation conference, each party must submit an ADR statement directly to the mediator, which describes:
    - i. Background of the case.
    - ii. The legal and factual issues.
    - iii. Discovery issues.
    - iv. Past settlement discussions.
    - v. Cost and Time estimates.
    - vi. Future court dates.
    - vii. Any documents that might be helpful.
  - m. All of the contents of the ADR process are strictly confidential.
  - n. At the end of the process, the mediator must submit a written report to the court explaining the results of the ADR proceeding.
3. **California CD LBR App. III (Second Amend. Gen. O. 95-01) and Bankr. Med. Program Procedures Manual**
- a. Mediation panel consists of lawyers and non-lawyers who apply and are accepted by the judges of the Court.
  - b. Mediators serve for three-year terms, renewable at the discretion of the judges.
  - c. Mediator applicants who are lawyers must have been members of any bar for at least five years and served as the attorney of record for the duration of at least three bankruptcy cases or served as the attorney of record for the duration of at least three adversary proceedings.
  - d. Non-attorney applicants must be a member in good standing of a particular profession for at least five years.
  - e. The Chief Judge appoints a judge of the Court to be the Mediation Program Administrator.
  - f. Parties may request assignment to the Mediation Program, though a judge may act *sua sponte* and designate specific matters to the Mediation Program.
  - g. Mediators with conflicts of interest must disclose them to all parties.
  - h. Mediation conferences are confidential, though material normally discoverable is not rendered confidential merely because it appears in a mediation conference.
  - i. A recorded settlement agreement is not rendered inadmissible or protected from disclosure if:
    - i. The oral agreement is recorded by a court reporter or tape recorded, etc.
    - ii. The terms of the agreement are recited on the record in front of the mediator and the parties agree to the terms.
    - iii. The parties expressly state that the agreement is binding.
    - iv. The recording is reduced to writing and signed by the parties within 72 hours after it is recorded.
  - j. Parties either select a mediator themselves, or, if they cannot agree on an alternate mediator, the judge will appoint one.
  - k. No later than 14 days after appointment, the mediator should hold a telephone conference with the parties to discuss and set up the mediation.

- l. Each party submits a 10-page (maximum) mediation statement that is confidential and not filed with the Court.
  - m. Rules of evidence do not apply in a mediation conference.
  - n. The mediator may advise parties as to settlement positions and may submit a written settlement recommendation memorandum to the parties, but the memorandum should not be distributed to the Court.
  - o. Mediators must serve on a pro bono basis for the first full day of at least one mediation conference per quarter per year.
4. **California ED Bankruptcy Court General Order 95-1**
- a. “Resolution advocates” serve one-year terms and may be eligible, at the judges’ discretion, for reappointment in succeeding years.
  - b. Each Resolution Advocate must:
    - i. Be a member of good standing of any bar in the U.S. for at least five years;
    - ii. Be a member in good standing of the federal courts for the Eastern District of California.
    - iii. Have devoted a minimum of 30 percent of his/her practice to bankruptcy law or debtor/creditor rights during each of the five years preceding application to be a mediator.
    - iv. Be willing to serve for one year and mediate at least one matter during each quarter of that year.
  - c. A judge of the Court is appointed to administer the program.
  - d. The judge can refer a case to the Bankruptcy Dispute Resolution Program (BDRP), or parties can seek referral by motion. A judge may act sua sponte in making such referrals.
  - e. Within seven days of referral, the Resolution Advocate should notify the parties of the date for the conference, which should commence no later than 30 days after referral.
  - f. Within 14 days of referral, the mediator should conduct a conference with counsel of the parties.
  - g. No later than 15 days after referral, unless modified by the Resolution Advocate, the parties should submit to each other a 15-page (maximum) written BDRP statement.
  - h. Written and oral communications made in connection to a BDRP conference are confidential, unless the parties stipulate otherwise, or unless the information is otherwise discoverable, or unless the information is offered for another purpose.
  - i. The Resolution Advocate may encourage settlement by advising a party to change his/her position, and may submit a written settlement recommendation memorandum to the parties, which is not to be submitted to the Court.
5. **California ND LBR 9040 through 9050**

- a. Counsel and client must sign a certification of discussion and consideration of ADR options no later than 28 days after initial status conference.
- b. Resolution Advocates must have the same qualifications as those in the Central and Eastern Districts.
- c. Referral to BDRP either by motion, by agreement of the parties, or by order of the judge.
- d. The Resolution Advocate must hold a telephone conference with the parties as soon as practicable after notification of appointment.
- e. Within seven days of the telephone conference, the Resolution Advocate should notify the parties of the date of the BDRP conference, and that conference should commence no later than 28 days from notification of appointment.
- f. Not later than 14 days after referral to the BDRP, the parties should submit statements not exceeding 15 pages to the Resolution Advocate.
- g. Written and oral communications made in connection to a BDRP conference are confidential, unless the parties stipulate otherwise, or unless the information is otherwise discoverable, or unless the information is offered for another purpose.
- h. The mediator's role will be to "assist the parties in settling the dispute," to "assess the relative strengths and weaknesses of the parties contentions and evidence," to "help the parties devise a plan," and to "estimate, where feasible, the likelihood of liability and the dollar range of damages."

**6. California SD LBR 7016-6**

- a. Court established two lists of mediators: one list of those mediators entitled to compensation, and another list of mediators who volunteer their services.
- b. To qualify for service on the Voluntary Mediation Panel, an attorney must meet the following qualifications:
  - i. Attorney is an active member of the California bar and licensed to practice before the State Courts and the Federal Courts for the Southern District of California.
  - ii. The attorney has been admitted to practice in a state court for at least four years.
  - iii. The attorney has served as the attorney of record on at least three bankruptcy cases through their duration, or has served as the attorney of record for at least three adversary proceedings through their duration, or has had other equivalent bankruptcy experience.
- c. Non-attorneys qualify for voluntary service if:
  - i. The person is a member of the panel of trustees or examiners maintain by the Office of the U.S. Trustee; or
  - ii. The person is a certified public accountant in the State of California; and
  - iii. Either person must demonstrate service to a bankruptcy estate in at least 10 asset estates as trustee, and/or at least 10 cases as bankruptcy examiner or accountant for a trustee or debtor-in-possession from commencement through completion of such case.

- d. Mediators can join the compensated mediation panel if they have completed 25 hours of mediation training provided by the San Diego Mediation Center or equivalent.
- e. Mediators seeking compensation must, within the calendar year prior to the year in which mediation is conducted, conduct two bankruptcy mediations or six hours of mediation from any source, or attend a half-day refresher program provided by the San Diego Mediation Center or equivalent.
- f. Except for the first half-day of mediation (3.5 hours), the mediator is compensated at \$200 per each half-day of mediation.
- g. Mediation proceedings are confidential unless a settlement is reached, in which event the agreement to settle is reduced to writing and is binding.

**7. Guam**

- a. There are no rules on file with regard to the use of ADR in the District of Guam.

**8. Hawaii *LBR 9019-2 & Guidelines for Bankruptcy ADR Program***

- a. The Court may establish a Bankruptcy Mediation Panel.
- b. The Court may appoint a Bankruptcy Alternative Dispute Resolution (BDR) Administrator to administer the program.
- c. The BDR Administrator must establish and maintain a list of qualified individuals approved by the Court to serve as members of a Bankruptcy Mediator Panel.
- d. To serve on the mediation panel, members must participate in at least one 4 hour BDR conference per calendar quarter.
- e. A panel member may be required to complete a court approved training prior to serving in any mediations.
- f. No fees may be charged for telephonic conferences and preparation time prior to the first BDR conference and for the first 4 hours of BDR conference time. If the matter is not resolved after the first 4 hours of BDR conference time, the mediation is authorized to request compensation at their normal hourly rate.
- g. Communications made in connection with any mediation are subject to Rule 408 of the Federal Rules of Evidence (settlement discussions privileged). Mediators and parties cannot communicate with the Court about the substance of any position without the consent of all parties.
- h. Mediators are entitled to all immunities legally applicable.
- i. Within 7 days after the completion of the BDR conference, the mediator shall submit a mediator report, which should describe the time allocated and the outcome of the conference.

**9. Idaho**

- a. District Court Local Rule 16.4 and Mediation Plan references “proceedings in bankruptcy,” and the bankruptcy court’s website provides links to the district court’s mediation and arbitration plans.

- b. This Rule indicates that bankruptcy judges may refer cases to ADR and that a docket entry order must be completed at the conclusion of the Judicial Settlement Conference indicating if settlement was reached.
- c. Parties may also elect mediation at any time. The parties may either select an independent mediator or choose one from the court's preapproved list of mediators.
- d. Within 5 days of the conclusion of a mediation session, the mediator shall file a report with the court's ADR Coordinator indicating when mediation occurred and if settlement was reached.

10. **Montana** *LBR 9019-1*

- a. The Court encourages the use of ADR in any adversary proceeding or contested matter.
- b. The District Court local rules on Early Neutral Evaluation apply, subject to modifications necessary to ensure a specialized panel and requirements appropriate to bankruptcy issues.

11. **Nevada** *LBR 9019*

- a. The court may at any time, *sua sponte* or at the request of any party, order that a contested matter or adversary proceeding be set for settlement conference or other ADR proceeding.
- b. The court may stay the trial schedules to facilitate the ADR process.
- c. The plaintiff or moving party must report to the court at the end of the ADR process in order to inform whether or not the matter has been settled.

12. **Oregon** *LBR 9019-2*

- a. The Court may order assignment of a matter to mediation *sua sponte*, or upon the motion of any party or the U.S. Trustee.
- b. The Court may assign a matter to mediation by stipulation of counsel.
- c. Mediators with appropriate qualifications may apply to the Court for inclusion in the Court's registry of mediators.
- d. The mediator has no authority to place an order upon the parties during or after mediation. However, the mediator is authorized to make verbal or written settlement recommendations which must NOT be filed with the court.
- e. If the parties cannot agree on a mediator within 7 days of the assignment to mediation, they should submit a list of four mediators, of which at least two are from the mediation register, from which the Court will appoint a mediator.
- f. Other than the mediator's final report, which must be submitted no later than 2 days after the mediation, all communications made or supplied during the mediation are confidential. Fed.R.Evid. 408 applies.
- g. Mediator compensation will be on terms agreed to by parties and mediator.

13. **Washington ED** *Bankr. Ct. Gen. O.: Voluntary Mediation; Bankr. Ct. ADR Form #2: Procedural Requirements*

- a. Any adversary proceeding or contested matter may be assigned by the Court to the Mediation Program at the request of both parties involved.
- b. The court will select the mediator for the matter from a list of qualified mediators compiled by the judges of the Bankruptcy Court.
- c. In order to be on the list, one must:
  - i. Apply
  - ii. Meet the following qualifications:
    - (1) Have completed a Bankruptcy Mediation orientation and training program as ordered by the court.
    - (2) Agree to serve *pro bono* on one matter every half year.
    - (3) Agree to serve on the Bankruptcy Court Mediation Panel for two (2) years.
    - (4) Attorneys must be members in good standing of the bar of any state, and must be admitted to practice in the Eastern District of Washington.
- d. Mediators will be compensated as agreed by the parties unless one party can demonstrate the need for the mediator to serve *pro bono*.
- e. The attorneys of each party will submit a Conference Statement to the mediator before the conference which explains:
  - i. Key issues.
  - ii. Status of the dispute.
  - iii. A proposal for resolution.
  - iv. Any other information the attorneys feel is necessary.

14. **Washington WD** *LBR 9040--1a*. No later than 28 days after an answer or other response to a complainant is

filed, client and counsel shall sign and serve a Mediation Certification showing that they have considered mediation to resolve their dispute. The court shall maintain a list of qualified panelists who have volunteered and been chosen to serve as mediators.

- b. Mediators shall serve two year terms on the panel and are eligible for two year renewals upon approval from the committee.
- c. To qualify, mediators should:
  - i. Be a member of good standing of the bar of any state or the District of Columbia for at least 5 years.
  - ii. Be a member in good standing with the federal courts for the Western District of Washington
  - iii. Have already served as the principle attorney of record in a combination of at least ten bankruptcy cases or adversary proceedings from commencement to conclusion.
  - iv. Be willing to serve for a two year term of appointment
  - v. Be available to evaluate, mediate, and facilitate matters at least once during every quarter of their appointed term.
  - vi. Participate as a mediator in not less than two matters per year on a pro bono basis.
- d. As soon as practical after appointment, the mediator shall conduct a telephonic

- conference with pro se parties and/or counsel.
- e. Within 7 days of the initial conference, the mediator shall give notice to the parties of the time and place for the mediation session to be held, which should commence no later than 28 days after the appointment of the mediator.
  - f. The mediator shall have no obligation to make any verbal or written recommendations to the parties or counsel, but are authorized to do so without submitting any copies of written recommendations to the court.
  - g. Within 14 days of the conclusion of mediation, the mediator shall file with the Court a mediation report which indicates the outcome but does not explain any confidential details regarding the case.
  - h. Other than the two required pro bono mediations per year, mediators may charge their normal hourly rates as compensation, provided that the parties have an ability to pay and have not been previously excused from paying.

#### **14. Northern Mariana Islands**

- a. There are no rules on file with regard to the use of ADR in the District of the Northern Mariana Islands.

### **The 10<sup>th</sup> Circuit**

#### **1. Colorado *LBR 919***

- a. At any point, the Court may assign the disputed matter to an alternative dispute resolution (ADR) process sua sponte, upon written request from the parties, upon motion by a party to the matter, or upon motion by the US Trustee.
  - i. The Court may also assign ADR if the parties stipulate to it.
  - ii. The Court in its discretion may order any party or party in interest to participate in mediation.
- b. The ADR process may stay the trial schedules until further notice if the judge decides that it is necessary.
- c. The parties may discontinue the ADR process upon a showing of good cause.
- d. Unless a party qualifies for pro bono services, or unless the Court orders otherwise, each party is responsible for paying the mediator's fees and all incidental costs of the mediation on a pro rata basis.
- e. As soon as practical after the mediation session, the mediator must file with the court a Report of Mediation indicating the date that the mediation was conducted, the parties in attendance, and whether the parties resolved the matter.

#### **2. Kansas *LBR 9019.2***

- a. At any time during a case, the judge may assign or encourage the parties in a disputed matter engage in an ADR process, unless the mediator, the parties, or a court official deem it futile, ineffective, or unsafe to engage in an ADR process.

- b. The mediator of the ADR process will either be appointed by the judge or agreed upon by the parties involved. If the parties agree to a mediator, the judge must approve. Mediators can be:
  - i. A judge of the district or bankruptcy court, retired or active; or
  - ii. A neutral attorney. The Court maintains a list of attorneys that are qualified to be mediators, with qualifications that include:
    - a. 3 years of experience in bankruptcy law
    - b. 30 hours of mediation training
    - c. 10 hours of bankruptcy training
    - d. 6 hours of bankruptcy education annually, and
    - e. 6 hours of ADR education annually.
- c. The parties can agree to have a non-attorney as their mediator, but he/she must be approved by the court.
- d. The fee paid to the mediator is agreed upon by the two parties and is paid before ADR commencement.
- e. The mediator must file a status report on the process within 45 days of the first meeting.
- f. Each party must have a representative with authority to negotiate attend all sessions; however parties may be exempt from this rule for good cause.
- g. The mediator may not disclose information to anyone outside the ADR process, except for settlement terms or failure to appear details.
- h. Documents from the ADR process are not available to the Court.
- i. At the conclusion of the ADR process, the mediator must submit a Notice of Completion to the Court.

### 3. **New Mexico**

- a. There are no rules on file with regard to the use of ADR in New Mexico.

### 4. **Oklahoma ND LBR 9019-2**

- a. At any time before or during a case, the judge may order a settlement conference or any other ADR process, at his/her own discretion or at the request of either party.
- b. The mediator for the ADR process will be selected by the Court.
- c. Unless otherwise ordered by the judge, assignment to an ADR process does not delay or stay any previously set trial schedules. Additionally, any changes in trial schedules will not affect the ADR process.
- d. One attorney along with one representative, who has full settlement authority, must attend each meeting of the ADR.
  - i. Upon the mediator's consent, the representative who has full settlement authority can attend the conference by telephone.
  - ii. Government entities may file motion for limited representation at ADR within 11 days prior to the process.
- e. Statements and substance of the ADR process will not be used in any form in the litigation or trial of the case and only pertain to those parties involved in the conference.



- f. If a party fails to participate amicably in the ADR process, the mediator can issue a report to the bankruptcy judge and proper action will be taken.
5. **Oklahoma ED LBR 9019-2(d)(pretrial procedures)**
    - a. ADR is an option.
    - b. The two parties must agree to participate in ADR at the pretrial conference, where they will discuss the possible benefits and costs of the ADR process as it pertains to their case. One attorney along with one representative, who has full settlement authority, must attend each meeting of the ADR.
    - c. The scheduling of settlement conferences will not continue, delay, or otherwise interfere with scheduling dates set pursuant to other orders in the case or proceedings.
    - d. The court has the authority to order payment for the mediator at his/her normal hourly rate on an equitably shared rate for the parties.
  6. **Oklahoma WD LBR 7016 (f)**
    - a. Either party involved in a dispute may request an ADR.
      - i. After a party requests and ADR, the opposing party has a maximum of fourteen days to file a written objection, which must state the reason for their objection.
    - b. After the court hears the request and any objections, the court can decide to approve a non-binding ADR.
    - c. The costs of the ADR process are borne by the party who requested the ADR unless the parties agree to share the costs.
    - d. Judges may also sua sponte or upon request, direct the parties to have a settlement conference in front of another judge.
    - e. The judge has the ability to stay the case in order to facilitate the ADR process.
  7. **Utah LBR 9019-2**
    - a. If both parties agree and file a motion, either before or during the trial, the Court may approve the use of an ADR process.
    - b. Even after the ADR process has begun, it is still under the jurisdiction of the Court.
  8. **Wyoming**
    - a. Although the Wyoming District Court Rule Number 16.3(d) refers to mediation, the Bankruptcy Court has no local rule with regard to adversary proceedings in bankruptcy cases.

## **The 11<sup>th</sup> District**

### **1. Alabama MD**

- a. There are no rules on file with regard to the use of ADR in the Middle District of Alabama.
2. **Alabama ND LBR 9019-2**
- a. A judge may at his/her own discretion refer the parties involved in a matter to ADR.
  - b. The District Court establishes a Panel of Neutrals from which mediators for ADR are selected.
    - i. The panel consists of people who the judges of the District feel have the necessary qualities and training to serve as mediators.
    - ii. If a person wants to be included on the panel they must apply to the Chief Judge of the District Court, after which they will go through an application process before being selected.
    - iii. Each member of the Panel will be encouraged to serve as a mediator *pro bono* for at least five hours per year.
  - c. Similar to the pretrial conference, the judge may have an ADR evaluation conference to determine if the case would be suitable for ADR. This conference must be attended by the attorneys representing each party or by the parties themselves. After this conference, the judge may prescribe a specific ADR track or the parties may agree to one. The possible tracks are:

**Open ADR Track:**

- ◆ The parties mutually agree to utilize any form of ADR other than Mediation or Mediation/Arbitration.
- ◆ The parties will have to submit an agreement to court explaining the conduct of the ADR process which they have chosen and a written report of the proceedings and agreements.
- ◆ An open ADR Track is conducted at the expense of the parties.

**Mediation Track:**

- ◆ Any civil case may be referred to mediation unless judge excludes certain categories.
- ◆ A matter may be referred to mediation by the stipulation of all parties or by court order or upon motion of any party.
- ◆ A party may object to mediation within ten (10) days of the referral to mediation.
- ◆ Once a matter is referred to mediation, the parties have ten (10) days to select a mediator of their choice.
- ◆ If the parties cannot agree to a mediator or fail to notify the court of their selection, the court will send the names of three (3) proposed mediators taken from the Federal Court Panel. Each party then ranks the mediators in order of preference, and returns the list to court.
- ◆ The court then chooses one list at random and crosses out that list's "least preferred" mediator on both lists. The court then looks at the other list and chooses the "most preferred" mediator from the remaining two names.

- ◆ Once a mediator is selected, the mediator will contact all parties and arrange a conference no more than (30) days after he/she was appointed.
- ◆ When a matter enters into mediation, the schedules from the proceeding are stayed until the court sees fit.
- ◆ Ten (10) days before the mediation conference the parties must submit all relevant pleadings and motions, a memo stating the positions of each party, and any other materials that would be seen as beneficial.
- ◆ An attorney and a representative from each party, unless the party is other than an individual, must attend all mediation conferences. Failure to do so will be reported by the mediator to the court.
- ◆ The mediator sets the time of the conference. The mediator and the parties agree to the place.
- ◆ The mediation process concludes when a settlement is reached or the mediator concludes that further efforts would not be useful.
- ◆ The mediator will report the results to the court regardless of whether or not a settlement is reached. If no settlement is reached, the mediator reports this fact only.
- ◆ The entire mediation process is confidential. The parties and the mediator may not disclose information regarding the process, except for terms of settlement, to the court or any other person unless otherwise agreed upon. No record is made of the mediation proceedings.
- ◆ The mediator will be compensated at a rate agreed to by the parties, or as ordered by the court. This compensation will be equally borne by both parties, unless otherwise agreed upon.

**Med/Arb Track:**

- ◆ In this track, a matter is first referred to mediation. After mediation, if the matter is still unsettled, the neutral will provide a decision on the case based on the facts and arguments discussed during mediation.
- ◆ A case can only be referred to Med/ARB with the agreement of the parties.
- ◆ All of the rules regarding the Mediation phase are the same as in the Mediation track. The rules regarding the Arbitration piece are as follows:
- ◆ If a settlement agreement is not reached during the mediation phase, the parties will have a chance to present their arguments one more time.
- ◆ After which, the neutral will render a decision within reasonable time, and mail it to the parties.
- ◆ This decision will usually be non-binding, however the parties may agree at the beginning of the arbitration phase that the neutral's decision will be binding. They may also decide that the decision will be conditionally binding, in which case, the parties have thirty (30) days to reject the decision after it has been handed down.
- ◆ In this case, if a party rejects the decision of the neutral and a more favorable result does not result from trial, that party must pay to the other party all costs incurred by the other party from the date of the rejection.

- ◆ At the end of the arbitration phase, the neutral must report to the court the results of the procedure using specific language provided by the Rule.

3. **Alabama SD**

- a. There are no rules on file with regard to the use of ADR in the Southern District of Alabama

4. **Florida MD LBR 9019-2**

- a. Any civil action, adversary proceeding, or contested matter may be referred by the court to ADR.
- b. The court may order ADR at its own discretion or by motion of any party or the United States Trustee.
- c. The parties may stipulate to a particular person on the register of mediators.
  - i. If the mediator is unable to serve, he/she must file a notice of their inability to serve within five days of the request.
- d. If the two parties do not stipulate to a particular person, the court may randomly select the mediator for the ADR process from the register of mediators.
  - i. The register of mediators is set up by the courts and it consists of qualified attorneys who have volunteered to serve as mediators. In order to be qualified the attorney must:
    - 1. be a member of the Florida Bar,
    - 2. have practiced law for at least 4 years,
    - 3. have served in at least 10 bankruptcy matters from commencement through conclusion and,
    - 4. have completed mediation training in Florida or another state.
  - ii. Qualified attorneys must then apply to be placed on the register of mediators.
  - iii. An attorney can be removed from the register at his/her own request or the request of the court.
- e. Mediators are held to the same code that Judges are held to under 28 U.S.C. § 455.
- f. Assignment to an ADR process does not delay or stay any previously set trial schedules.
- g. After consulting with the parties involved, the mediator chooses the time and place of the ADR process. He/she must give the parties at least 15 days' notice.
- h. The mediator has the ability to set a deadline for the parties to act upon settlement.
- i. One attorney along with one representative, who has full settlement authority, must attend every meeting of the ADR.
  - i. If a party does not show up to a meeting, it will be reported to the court by the mediator.
- j. Documents from the ADR process are not available to the court.

- k. Within 10 days after the mediation conference, the mediator is to file a report with the court stating the result of mediation.
  - i. If the mediator's report shows that the issue has not been resolved, the case will be tried as originally scheduled.
- l. If the parties settle, they shall submit a stipulation and joint motion for compromise of controversy to the court within 20 days of the mediators report.
- m. Statements and substances of the ADR will not be used in any form in the trial of the case and only pertain to those parties involved in ADR.
  - i. No party is bound by any statement made or action taken at the mediation unless a settlement is reached. In which case, the agreement is in writing.
- n. Mediation may end at any time at the wishes of the judge or upon motion of a party.

**5. Florida ND LBR 7016-1, Addendum B**

- a. The court may refer any pending civil case to ADR. The parties may also request that the court refers any pending civil case to ADR.
- b. The parties may agree upon a certified mediator.
  - i. A person is considered a certified mediator if he/she has completed the necessary requirements set forth by the Supreme Court of Florida for mediator certification.
  - ii. If the parties agree upon a mediator who is not certified as a mediator, he/she must be approved by the court.
  - iii. If the two parties cannot agree to a mediator, the court may appoint one.
- c. Mediators are held to the standards of conduct adopted by the Supreme Court of Florida for circuit court mediators.
- d. The parties may agree to the rate of compensation for the mediator.
  - i. If the parties cannot agree the court decides on the rate. In this case, the parties share the cost equally.
- e. The mediator will only report to the presiding judge whether the case has settled, adjourned or continued for further mediation, or was terminated.

**6. Florida SD LBR 9019-2**

- a. The court may refer any adversary proceeding or contested matter to ADR at any point during a case. This may be done at the request of any party or at the courts own discretion.
- b. Assignment to ADR does not delay or stay any previously set trial schedules.
- c. After the matter is referred to ADR, the process must be scheduled to be conducted no later than ten (10) days before the scheduled trial or hearing. Also, the parties must agree to a mediator within seven (7) days after the matter has been referred to ADR.
  - i. If the parties cannot agree to a mediator within seven days, the court will appoint one. If any party objects to the mediator

appointed by the court, they must file a request for an alternate mediator. This may only be done once.

- d. The court will maintain a register of qualified mediators available to serve. In order to be on the register one must:
  - i. Be an active member of the Florida Bar or be a retired federal or state judge.
  - ii. Have been in practice for the past five years or be a retired federal or state judge.
  - iii. Have completed forty (40) hours in a circuit court mediation training program certified by the Florida Supreme Court.
  - iv. Agree to accept at least two (2) mediation assignments per year in cases where one or more parties are unable to compensate the mediator.
- e. The parties may agree to a mediator who does not have these qualifications if they choose.
- f. Mediators are compensated at the rate set by the district court or a rate agreed upon by the parties and the mediator.
  - i. If the parties cannot agree on how much each party will pay the costs will be shared equally. However, a case trustee's or debtor's share of the cost will be an expense of the estate.
- g. The mediator picks the time and place for the ADR process, and must give at least fourteen (14) days warning to the parties.
- h. An attorney and a representative with full negotiating powers, from each party, must be present at all ADR meetings.
  - i. If a party fails to show, the mediator will report it to the court.
- i. The mediator must, within seven (7) days of the end of the ADR process, file a report with the court which explains how the process ended.
- j. Conduct or statements made in the course of the ADR process shall not be admitted or otherwise disclosed to the court.
- k. The court or any party may at any time decide to cease mediation.
- l. The mediator has no obligation to issue written or oral recommendations and, if the mediator does in fact provide written recommendations, it shall not be to the court.

#### **7. Georgia MD**

- a. There are no rules on file with regard to the use of ADR in the Middle District of Alabama

#### **8. Georgia ND**

- a. There are no rules on file with regard to the use of ADR in the Northern District of Alabama

#### **9. Georgia SD**

- a. There are no rules on file with regard to the use of ADR in the Southern District of Alabama

### **The D.C. District**

1. **D.C.**
  - a. There is no rule on file with regard to the use of ADR; however the DC circuit piggybacks on District Court ADR processes.