

## Commentary

[Source: L.B.R. 914 and New. L.B.R. 9014-1 added on 5/29/08]

### LOCAL BANKRUPTCY RULE 9019-2 ALTERNATIVE DISPUTE RESOLUTION

**(a) Assignment of Matters to Mediation:** The court may refer a matter to mediation *sua sponte*, upon written stipulation by the parties to the matter, upon motion by a party to the matter, or upon motion by the United States Trustee. Participation by the parties in mediation is ordinarily voluntary, however, the court in its discretion may order any party or party in interest to participate.

**(b) Matters Subject to Mediation:** Unless otherwise ordered by the court, all controversies arising in cases under title 11, U.S.C., adversary proceedings, contested matters and any other disputes in bankruptcy cases are eligible for referral to mediation.

**(c) Deadlines:** Unless otherwise ordered by the court, the referral of a matter to mediation does not operate to stay, postpone or extend any deadlines for taking any action required or allowed by law, court order or applicable rule.

**(d) Mediation/Administration:** Upon entry of a court order referring a matter to mediation, the parties must abide by all guidelines and requirements of the Faculty of Federal Advocates' Bankruptcy Mediation Program (the "Program"), if applicable. No later than fourteen (14) days after entry of the order referring the matter to mediation, the parties designated in the order must contact the Program Administrator to commence the mediation. Unless a party qualifies for pro bono mediation services under the Program, or unless the court orders otherwise, all mediator's fees and incidental costs of the mediation are to be paid by the parties pro rata (exclusive of the parties' respective attorneys' fees and costs), except as otherwise agreed by the parties or ordered by the court.

**(e) Confidentiality; Nondisclosure:**

**(1) Protection of Information:** Unless otherwise agreed by the parties or ordered by the court, all parties to the mediation and the mediator are prohibited from disclosing or producing in any manner, outside the context of the mediation, any oral or written information related to the mediation. Federal Rule of Evidence 408 governing compromises and offers to compromise, and any other applicable law relating to the privileged and confidential nature of settlement discussions, apply to the mediation. Notwithstanding the confidentiality of the mediation, information otherwise discoverable or admissible as evidence does not become exempt from discovery or inadmissible merely because it may be disclosed in and related to the mediation.

**(2) Discovery from Mediator:** The mediator shall not be compelled by the court, the parties or any person or entity to disclose or produce any written or oral information received or compiled while serving as a mediator in a matter. The mediator shall not testify or be compelled to testify concerning the mediation in any proceeding of any nature. Any party or entity demanding or seeking to compel the mediator to disclose or testify to matters subject to this L.B.R. are liable to the mediator for the mediator's reasonable costs and attorneys' fees in resisting such demands.

**(f) Report of Mediation:** As soon as practicable after the conclusion of the mediation, the mediator must file with the court a Report of Mediation, advising only:

- (1) the date(s) that the parties conducted the mediation;
- (2) the parties in attendance at the mediation; and
- (3) whether the parties resolved the matter.

No other information must be disclosed in the Report of Mediation.

**(g) Termination of Mediation:** The mediation will terminate upon the earlier of:

- (1) the filing of the mediator's Report of Mediation; or
- (2) entry of a court order withdrawing the referral of the matter to mediation.

**(h) Noncompliance; Sanctions:** A party's failure to comply with the provisions of this L.B.R. may result in the imposition of appropriate sanctions by the court against such party, or counsel for such party, or both.

### **Commentary**

[Source: L.B.R. 919 and Faculty of Federal Advocates]

Litigation in bankruptcy cases frequently imposes economic burdens on parties and may delay the resolution of disputes. Alternative dispute resolution, including mediation, often reduces the costs and associated burdens of litigating disputed issues in bankruptcy cases and facilitates settlements. The purpose of this L.B.R. is to allow parties a means of submitting disputed issues in bankruptcy cases, including contested matters and adversary proceedings, to mediation. Mediation as contemplated by this L.B.R. is not administered by the court, but the parties and mediators remain subject to court supervision and all applicable rules and court orders in the case. Mediation is just one form of alternative dispute resolution and the decision to engage in, or refrain from mediation does not preclude any other form of alternative dispute resolution to which the parties in a case may agree.