

Advocate shall promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the Resolution Advocate's profession. If the Resolution Advocate's firm has represented one or more of the parties, the Resolution Advocate shall promptly disclose that circumstance to all parties in writing. A party who believes that the assigned Resolution Advocate has a conflict of interest shall promptly bring the matter to the attention of the Resolution Advocate. If the Resolution Advocate does not withdraw from the assignment, the matter shall be brought to the attention of the Court by the Resolution Advocate or any of the parties.

#### **9045-1. Dispute Resolution Procedures.**

##### **(a) Availability of Resolution Advocate.**

Promptly after appointment, a Resolution Advocate not available to serve in the Matter shall notify the parties, the alternate Resolution Advocate, and the BDRP Administrator's staff assistant of that unavailability. The alternate Resolution Advocate shall thereafter serve as the Resolution Advocate.

##### **(b) Initial Telephonic Conference.**

As soon as practicable after notification of appointment, the Resolution Advocate shall conduct a telephonic conference with counsel for the parties to provide preliminary information to the Resolution Advocate concerning the nature of the Matter, the expectations of the parties, and anything else which will facilitate the process.

##### **(c) BDRP Conference Scheduling.**

Within 7 days of the telephonic conference, the Resolution Advocate shall give notice to the parties of the time and place for the BDRP conference, which conference shall commence not later than 28 days following the date of appointment of the Resolution Advocate, and which shall be held in a suitable neutral setting, such as the office of the Resolution Advocate, at a location convenient to the parties. Upon written stipulation between the Resolution Advocate and the parties, the BDRP conference may be continued for a period not to exceed 28 days.

##### **(d) BDRP Statements.**

Unless modified by the Resolution Advocate, no later than 14 days after the date of the order assigning the Matter to the BDRP, each party shall submit directly to the Resolution Advocate, and shall serve on all other parties, a written BDRP statement. Such statements shall not exceed 15 pages (not counting exhibits and attachments). While such statements may include any information that would be useful, they must:

- (1)** Identify the person(s), in addition to counsel, who will attend the session as representative of the party with decision making authority;

- (2) Describe briefly the substance of the dispute;
- (3) Address whether there are legal or factual issues whose early resolution might appreciably reduce the scope of the dispute or contribute significantly to settlement;
- (4) Identify the discovery that could contribute most to equipping the parties for meaningful discussions;
- (5) Set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers and demands;
- (6) Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial; and
- (7) Indicate presently scheduled dates for further status conferences, pretrial conferences, trial or otherwise.

**(e) Statements Not To Be Filed.**

The written BDRP statements shall not be filed with the Court and the Court shall not have access to them.

**(f) Identification of Participants.**

Parties may identify in the BDRP statements persons connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the BDRP conference would improve substantially the prospects for making the session productive; the fact that a person has been so identified, shall not, by itself, result in an order compelling that person to attend the BDRP conference.

**(g) Documents.**

Parties shall attach to their written BDRP statements copies of documents out of which the dispute has arisen, e.g., contracts, or those whose availability would materially advance the purposes of the BDRP conference.

**9045-2. Attendance at BDRP Conference.**

**(a) Counsel.**

Counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in pro se) shall personally attend the BDRP conference and any adjourned sessions of that conference. Counsel for each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.

**(b) Parties.**

All individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall personally attend the BDRP conference unless excused by the Resolution Advocate for cause.

**(c) Telephonic Appearance.**

A party or lawyer who is excused from appearing in person at the BDRP conference may be required to participate by telephone.

**9045-3. Failure to Attend BDRP Conference.**

Willful failure to attend the BDRP conference and other violations of this order shall be reported to the Court by the Resolution Advocate and may result in the imposition of sanctions by the Court.

**9046-1. Conduct of the BDRP Conference.**

The BDRP conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. Where necessary, the Resolution Advocate may conduct continued BDRP conferences after the initial session. As appropriate, the Resolution Advocate may:

- (a)** Permit each party, through counsel or otherwise, to make an oral presentation of its position;
- (b)** Help the parties identify areas of agreement and, where feasible, formulate stipulations;
- (c)** Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Resolution Advocate that supports these assessments;
- (d)** Assist the parties in settling the dispute;
- (e)** Estimate, where feasible, the likelihood of liability and the dollar range of damages;
- (f)** Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and
- (g)** Determine whether some form of follow-up to the conference would contribute to the case development process or to settlement.

### **9047-1. Confidentiality.**

(a) All written and oral communications made in connection with or during any BDRP conference, including the BDRP statement referred to in B.L.R. 9045-1(d), shall be subject to all the protections afforded by Fed. R. Evid. 408 and by Bankruptcy Rule 7068. The Resolution Advocate may ask the parties to sign a confidentiality agreement provided by the Court.

(b) No written or oral communication made by any party, attorney, Resolution Advocate or other participant in connection with or during any BDRP conference may be disclosed to anyone not involved in the Matter. Nor may such communication be used in any pending or future proceeding in this Court to prove liability for or invalidity of a claim or its amount. Such communication may be disclosed, however, if all participants in the BDRP, including the Resolution Advocate, so agree. Notwithstanding the foregoing, this B.L.R. 9047-1 does not require the exclusion of any evidence:

(1) Otherwise discoverable merely because it is presented in the course of a BDRP conference; or

(2) Offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(c) Nothing in this B.L.R. 9047-1 shall be construed to prevent parties, counsel or Resolution Advocates from responding in absolute confidentiality, to inquiries or surveys by persons authorized by this Court to evaluate the BDRP. Nor shall anything in this section be construed to prohibit parties from entering into written agreements resolving some or all of the Matter or entering or filing procedural or factual stipulations based on suggestions or agreements made in connection with a BDRP conference.

### **9048-1. Suggestions and Recommendations of Resolution Advocate.**

If the Resolution Advocate makes any oral or written suggestions to a party's attorney as to the advisability of a change in that party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the party. The Resolution Advocate shall have no obligation to make any written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in part, directly or indirectly, to the Court.

### **9049-1. Procedures Upon Completion of BDRP Conference.**

Upon the conclusion of the BDRP conference, the following procedure shall be followed:

(a) If the parties have reached an agreement regarding the disposition of the Matter, the parties shall determine who shall prepare the writing to dispose of the Matter, and they may

continue the BDRP conference to a date convenient to all parties and the Resolution Advocate if necessary. The Court will accommodate parties who desire to place any resolution of a Matter on the record during or following the BDRP conference. Where required, they shall promptly submit the fully executed stipulation to the Court for approval;

(b) The Resolution Advocate shall file with the Court and serve on the parties and the BDRP Administrator's staff assistant, within 14 days, a certificate in the form provided by the Court, showing whether there has been compliance with the BDRP conference requirements of these Local Rules, and whether or not a settlement has been reached. Regardless of the outcome of the BDRP conference, the Resolution Advocate will not provide the Court with any details of the substance of the conference.

**9049-2. Evaluation.**

In order to assist the BDRP Administrator in compiling useful data to evaluate the BDRP, and to aid the Court in assessing the efforts of the members of the Panel, the Resolution Advocate shall report to the BDRP Administrator's staff assistant providing an estimate of the number of hours spent in the BDRP conference and statistical and evaluative information, which report shall be on a form provided by the Court.

**9050-1. Fee for Service of Resolution Advocates.**

The Resolution Advocates are authorized to charge each side, whether or not represented by counsel, up to \$100 for their services. This fee, which is waiveable in whole or in part in the discretion of the Resolution Advocate, is applicable for all matters assigned to the BDRP by Court order dated on or after January 2, 1999.