

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
ADOPTION OF PROCEDURES FOR) General Order No. 92-1-2
MEDIATION OF ADVERSARY)
PROCEEDINGS AND CONTESTED)
MATTERS)

At Alexandria, within said District, this 5th day of August, 1992:

Upon review of the heavy and consistently growing volume of cases in the Alexandria Division of the United States Bankruptcy Court for the Eastern District of Virginia, and particularly of the large number of contested matters and adversary proceedings being set for trial, thus overburdening the trial docket so as to unreasonably delay the assignment of a trial date and create undue hardship to the parties litigant before the Court, this Court, after receiving the comments of the Bar Liaison Committee for the Alexandria Division, in an effort to reduce cost to litigants and expedite resolution of disputed issues, has determined to implement within the Alexandria Division a pilot program of Court-sponsored mediation in which litigants and counsel meet with an independent mediator after the completion of discovery but before a trial date is set. Initially, the program will apply only to those cases in the Alexandria Division assigned to Chief Judge Martin V. B. Bostetter, Jr., but may be expanded in the future.

Accordingly, it is **ORDERED** that a program of Court-sponsored mediation is hereby established and will be governed by the following rules and procedures:

1.0 REGISTER OF VOLUNTEER MEDIATORS

1.1 The Court shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as mediators in contested matters and adversary proceedings in cases pending in this division. The attorneys so registered shall be selected by the chief judge of this district from lists of attorneys who meet the qualifications hereinafter described.

The attorneys so registered shall be members of the Bar of this Court. The application will be submitted to the Bar Liaison Committee of this division, which in turn shall submit to the Clerk the application of each proposed mediator. The application shall set forth the qualifications described herein and conform in format to the attached Exhibit "A".

1.2 In order to qualify for service as a mediator under this rule, an attorney shall certify to the Court that he or she meets the following minimum qualifications:

a. That the applicant is an active member of the Bar of the State of Virginia, duly licensed to practice before the courts of the Commonwealth of Virginia and the Federal Courts for the Eastern District of Virginia;

b. Has been admitted to practice in a state court for at least five (5) years;

c. Has served as the attorney of record and substantially participated as counsel for the debtor or debtor in possession in at least twenty (20) bankruptcy cases from commencement through conclusion (i.e., confirmation of a plan or discharge); or, alternatively,

d. Has served as the attorney of record for a party in interest in and substantially participated in at least ten (10) or more adversary proceedings or contested

matters no three of which are the same type (e.g., relief from stay, dischargeability, fraudulent conveyance, preference, etc.) from commencement through completion (i.e., judgment, order or stipulated settlement).

1.3 Attorneys selected by the Court to serve as mediators shall be expected to participate in an appropriate training session which is anticipated to require an entire day. Failure to participate shall be grounds for removal from the list of eligible mediators.

2.0 LIST OF ELIGIBLE MEDIATORS

2.1 A list of eligible mediators shall be submitted to the Divisional Deputy for the Alexandria Division by the Alexandria Division Bar Liaison Committee no later than 15 days prior to the beginning of each six month period, i.e., a list shall be submitted by December 15 for the period January 1 through June 30; and by June 15 for the period July 1 through December 30. The first list shall be submitted by September 15, 1992 and will remain in effect through June 30, 1993.

2.2 The list of eligible mediators shall be reviewed by the Chief Judge, and, thereafter shall be posted in the Clerk's Office in the Alexandria Division and made available to litigants upon request.

3.0 ASSIGNMENT TO MEDIATION

3.1 A case may be assigned to mediation either by joint request of the parties or by the Court at a status conference or other hearing.

3.2 In those cases where the parties jointly desire that the case shall be referred to mediation, they shall submit a praecipe, signed by counsel for all parties (or by the parties themselves, if not represented by counsel) requesting referral to mediation and designating,

from the current list of mediators, a mutually acceptable mediator and alternate, or if the parties can not agree on a choice of mediator, a statement to that effect. Upon submission of such a praecipe, the Clerk of Court, if the parties have agreed on a choice of mediator and alternate, shall enter for the Court an order referring the matter to mediation; otherwise the Clerk shall designate the mediator and alternate.

3.3 Where the adversary proceeding or contested matter is assigned to mediation by the Court at a status hearing, pretrial conference or other hearing, the parties attending the conference shall confer and attempt to designate a mutually acceptable mediator and alternate from the list of eligible mediators. If the parties cannot agree, the Court shall appoint a mediator and alternate from the list.

3.4 Form of order.

The Court's order assigning a matter to mediation shall be in the form attached hereto as Exhibit "B". The original shall be retained in the Court's file, one copy shall be mailed to the mediator, and one copy shall be mailed to each party.

4.0 MEDIATION PROCEDURE

4.1 Conflicts

Within 5 days of receiving a copy of the referral order, the mediator shall determine whether he or she is disqualified. Disqualification shall include, but not be limited to, acting as trustee in the case or in the case of an insider or affiliate of the debtor. If the mediator determines he or she is disqualified, the mediator shall promptly furnish a notice of disqualification to the parties, the clerk, and the alternate mediator, whereupon the alternate mediator shall, upon receipt of such notice, become the acting mediator.

4.2 Time and Place

The mediator shall fix a time and place for the mediation conference, and all adjourned sessions, which is reasonably convenient for the parties, and shall give them at least 15 days' written notice of the initial conference. The conference shall be set to begin as early as practicable, and in any event not more than 45 days after the mediator has been notified of his or her selection, unless truly exceptional circumstances prevent the conference from being had within such time or fairness to the parties requires a continuance, in which event the mediator may, with the consent of all the parties, continue the conference but shall advise the court by letter of the delay and the date of the initial conference, as continued. In no event shall the date from notification of the mediator's appointment to the initial conference extend more than 75 days.

4.3 Submission of Case Information.

Each party shall provide the mediator with a case information submission consisting of (1) a copy of the pleading (e.g., complaint, answer, or counterclaim) setting forth such party's cause of action or defenses; (2) a list of all witnesses which such party would call at trial, and a summary of their expected testimony; (3) a copy of the principal exhibits upon which such party would rely at trial; and (4) a written statement, not to exceed 3 pages, of the principal rules of law upon which such party relies. Where an exhibit is voluminous, a summary may be provided instead. The submission of a summary of expected testimony shall constitute a certification by the attorney that he or she, or other counsel of record for the party, has personally spoken with the witness or has reviewed a written statement of the witness, deposition transcript, or interrogatory answers signed by the

witness, and believes in good faith that the witness will testify substantially in accordance with the summary. The submission shall be provided to the mediator and served on all other parties not less than seven (7) calendar days prior to the date noticed for the mediation conference. It shall not be filed with the Court, shall not be construed as a pleading, shall not satisfy any discovery obligation, and shall not limit the evidence the parties can use at trial if mediation does not result in a settlement. No rebuttal or supplemental submissions shall be permitted.

4.4 Attendance and Preparation Required

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. Local counsel need not appear if lead counsel is present. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

- a. All liability issues;
- b. All damage issues; and
- c. The position of his/her client relative to settlement.

4.5 Parties to be Available

All individual parties who reside within the counties comprising the jurisdiction of the Alexandria Division shall personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, whose principal place of business is located in such area shall have a representative appear with authority to negotiate.

Individuals and other parties who neither reside in such area nor have their personal place of business located therein shall be available for conference with their counsel and the mediator

by telephone. The mediator shall decide when the parties are to be present in the conference room.

4.6 Failure to Attend

Willful failure to attend the mediation conference shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.

4.7 Proceedings Privileged

All proceedings or writings of the mediation conference, including the case submission, mediator's settlement recommendation, plus any statement made by any party, attorney or other participant, shall in all respects be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by statement or act said or done at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. Federal Rule of Evidence 408 applies herein.

4.8 Settlement Recommendations

a. If the mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his or her client.

b. The mediator shall have no obligation to make any written comments or recommendations but, in his discretion, may provide the attorneys for 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, either to the Court, or to the jury.

c. The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the mediator is a qualified attorney, selected by the Court, who has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of trial.

4.9 The mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the purpose of this order is prompt dispute resolution.

5.0 PROCEDURE UPON COMPLETION OF MEDIATION SESSION

5.1 Upon the conclusion of the first mediation session conducted by the mediator where all parties are in attendance, the following procedure shall be followed:

a. If the mediation session has been concluded and is successful in that the parties have reached an agreement regarding disposition of the proceeding, the parties shall determine who shall prepare the stipulation to (1) dismiss, enter judgment on whatever terms, or continue the mediation session to a date convenient to all parties and the mediator, and (2) submit the fully-executed stipulation to the Bankruptcy Court for approval; and

b. After the mediation, the mediator shall file with the Clerk within 10 days a certificate in the form attached as Exhibit "C" showing that there has been compliance with the settlement and mediation requirements of this order, and whether a settlement has been reached.

6.0 EFFECTIVE DATE

The foregoing Procedures for Mediation of Adversary Proceedings and Contested Matters shall become effective on October 1, 1992, and shall apply to all adversary proceedings and contested matters then pending or filed on or after such date.



MARTIN V. B. BOSTETTER, JR
Chief Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

APPLICATION FOR APPOINTMENT TO THE MEDIATION PANEL

Name: _____

Address: _____

Virginia State Bar Number: _____

Date of Admission: _____
(Must be five (5) years or more)

Are you a member of the United States District Court
for the Eastern District of Virginia?: _____

List

- a. twenty (20) bankruptcy matters in which you have served as attorney of record from commencement of a case to confirmation or discharge, or
- b. ten (10) or more adversary proceedings or contested matters in which you have served as attorney of record from commencement through completion (i.e., judgment, order, or stipulation). No more than three (3) of the proceedings should be of the same type (i.e., relief from stay, non-dischargeability, preference, etc.)

	<u>Case Title</u>	<u>Case Number</u>	<u>Date</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

EXHIBIT "A"

Case Title

Case Number

Date

6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____
18.	_____	_____
19.	_____	_____
20.	_____	_____

I hereby certify that I meet the qualifications for appointment to the Mediation Panel, and that the foregoing is true and correct.

Dated: _____ (Signature)

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
) Case No.
) Chapter
Debtor(s))

ORDER APPOINTING MEDIATOR
AND ASSIGNING MATTER TO MEDIATION

The above-captioned matter is hereby assigned to the following mediator or, if such mediator is unable to serve, to the alternate:

Mediator :

Alternate :

Name

Name

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

The matter concerns:

- () Dischargeability
- () Objection to Claim
- () Lien Avoidance
- () Other: _____

(The attorneys for the parties are listed on page 2)

The attorneys for the parties are:

Name
Counsel for _____

Name
Counsel for _____

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

The parties are ordered to comply with the provisions of General Order No. 92-1-2,
attached. This matter is continued to the ____ day of _____, 199__,
at _____, __.m.

Dated: _____

MARTIN V. B. BOSTETTER, JR.
Chief Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the Eastern District of Virginia
hereby certifies that a copy of this Order was mailed to
the parties set forth above.

Dated: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
	)	Case No.
Debtor(s))	
	)	Chapter
)	
)	
Plaintiff(s))	
)	
vs.	)	Adversary Proceeding
	)	No.
)	
)	
Defendant(s))	

ORDER APPOINTING MEDIATOR
AND ASSIGNING MATTER TO MEDIATION

The above-captioned matter is hereby assigned to the following mediator or, if such mediator is unable to serve, to the alternate:

Mediator :

Alternate :

Name

Name

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

The matter concerns:

- Dischargeability
- Objection to Claim
- Lien Avoidance
- Other: _____

The attorneys for the parties are:

Name
Counsel for _____

Address

City, State, Zip Code

Telephone Number

Name
Counsel for _____

Address

City, State, Zip Code

Telephone Number

The parties are ordered to comply with the provisions of General Order No. 92-1-2,
attached. This matter is continued to the ____ day of _____, 199__,
at _____, __.m.

Dated: _____

MARTIN V. B. BOSTETTER, JR.
Chief Judge

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the Eastern District of Virginia
hereby certifies that a copy of this Order was mailed to
the parties set forth above.

Dated: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
	)	Case No.
Debtor(s))	
	)	Chapter
)	
Plaintiff(s))	
)	
vs.	)	Contested Matter
	)	No.
)	
Defendant(s))	

ORDER APPOINTING MEDIATOR
AND ASSIGNING MATTER TO MEDIATION

The above-captioned matter is hereby assigned to the following mediator or, if such mediator is unable to serve, to the alternate:

Mediator :

Alternate :

Name

Name

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

The matter concerns:

- Dischargeability
- Objection to Claim
- Lien Avoidance
- Other: _____

The attorneys for the parties are:

Name
Counsel for _____

Name
Counsel for _____

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

The parties are ordered to comply with the provisions of General Order No. 92-1-2, attached. This matter is continued to the ____ day of _____, 199 __, at _____, __.m. The stay pursuant to 11 U.S.C. § 362 shall remain in full force and effect until that date and time.

Dated: _____

MARTIN V. B. BOSTETTER, JR.
Chief Judge

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Virginia hereby certifies that a copy of this Order was mailed to the parties set forth above.
Dated: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
	)	Case No.
)	
Debtor(s)	)	Chapter
)	
)	
)	
vs.	)	Adversary Proceeding No.
	)	(if applicable)
)	
	)	Contested Matter No.
Defendant(s)	)	(if applicable)

MEDIATOR'S CERTIFICATE OF COMPLIANCE

The undersigned court-appointed Mediator, appointed pursuant to order entered herein on the ____ day of _____, 199__, reports to the Court as follows:

- A. A mediation hearing was set for and held on _____ or continued to _____.
- B. A settlement of this matter has () has not () been reached.
- C. It was agreed that counsel for the Plaintiff/Defendant would prepare the stipulation for settlement, have it signed by all parties and the Mediator, and arrange with the Clerk for a date for presentation to the Court.

Dated: _____

Mediator

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
)	
	)	Case No.
Debtor(s))	
)	
	)	Chapter
)	
Plaintiff(s))	
)	
vs.	)	Adversary Proceeding
	)	No.
)	
Defendant(s))	

SCHEDULING ORDER

Upon consideration of the record in this adversary proceeding, the Court on its own motion ORDERS:

1. The deadline for filing an answer, all motions for more definite statement, and all motions to dismiss under Federal Rule of Bankruptcy Procedure 7012, is _____ . If a motion is filed, it shall be noticed for a hearing by the proponent of the motion who shall be responsible for giving notice to all other parties. If no notice is given, no hearing will be held, and the motion will be dismissed.

2. Each party shall, not later than sixty (60) days from the date of the issuance of the summons furnish every other party a preliminary list of all witnesses and their addresses, and documents which that party expects to rely upon or introduce at trial, and shall accompany the list with a copy of the documents themselves. A copy of the list of witnesses and documents, showing service as required by this Order, shall be filed with the Clerk, but the documents themselves shall not be filed.

3. All discovery shall be concluded within one hundred twenty (120) days from the date of the issuance of the summons, and shall be initiated by such date prior to the discovery cutoff as to allow the time for response permitted by the Federal Rules of Bankruptcy Procedure.

4. Within thirty (30) days after the discovery deadline set in paragraph (3) hereof, the parties shall meet to discuss (1) narrowing of issues for trial and (2) settlement, and shall certify to the Court on the **attached certification** form within seven (7) days of the meeting that a bona fide effort has been made to narrow the issues, settle the case, and consider mediation of the matter. The certification shall set forth the unresolved issues.

5. Unless the case is resolved, a pretrial conference will be held on _____ at ___ o'clock _ m. at which, unless the matter is assigned to mediation, a trial date shall be set and any other scheduling matters resolved. **Pursuant to General Order No. 92-1-2, Adoption Of Procedures For Mediation Of Adversary Proceedings And Contested Matters, this case may be assigned to mediation either by joint request of the parties, or by the Court at this pretrial conference.** In those cases where the parties jointly desire that the case shall be referred to mediation, they shall submit a praecipe, signed by counsel for all parties (or by the parties themselves, if not represented by counsel) requesting referral to mediation and designating a mutually acceptable mediator and alternate, or if the parties cannot agree on a choice of mediator, a statement to that effect. Upon submission of such a praecipe, the Clerk of Court, if the parties have agreed on a choice of mediator and alternate, shall enter for the Court an order referring the matter to mediation; otherwise the Clerk shall designate the mediator and alternate. Where the adversary proceeding or contested matter is assigned to mediation by the Court at this pretrial conference, the parties attending the pretrial conference shall confer and attempt to designate a mutually acceptable mediator and alternate. If the parties cannot agree, the Court shall appoint a mediator and alternate.

6. The attorney for the plaintiff shall serve a copy of this Order upon the defendant(s) simultaneously with the complaint and summons.

FOR THE COURT

Robert M. Wily, Clerk
United States Bankruptcy Court

Date: _____

by: _____
Deputy Clerk

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Virginia hereby certifies that a copy of this order was mailed to the parties set forth above.

DATED: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
)	
	)	Case No.
	)	Chapter
)	
Debtor(s))	
)	
)	
Plaintiff(s))	
	)	Adversary Proceeding
vs.	)	No.
)	
)	
Defendant(s))	

CERTIFICATION AS TO GOOD FAITH SETTLEMENT CONFERENCE
AND MEDIATION

The undersigned counsel for all parties in the above-titled litigation do certify as follows:

1. That a good faith settlement conference was held on the ____ day of _____, 199__ attended by the parties or duly-authorized agents of the parties with full authority to settle and that a full discussion was held, and the parties were unable to reach a settlement of the matter. The remaining unresolved issues are set forth on the attachment hereto.

2. That subsequent to the good faith settlement conference all parties or their duly authorized representatives discussed the reference of the above-styled matter to a mediator to attempt to settle the matter and that the parties were unable to agree that the matter should go to mediation.

Counsel for Plaintiff/Movant

Counsel for Debtor/Defendant

Counsel for:

Counsel for:

All counsel who have affixed their signature above do hereby certify that this Certification has been signed by all necessary parties and their duly-authorized representatives.