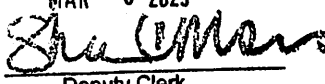


UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

MAR - 3 2025
By: 
Deputy Clerk

IN RE: :
: GENERAL ORDER 50-2025
PROCEDURES FOR MEDIATION :
REFERRALS :

ORDER REGARDING MEDIATION REFERRALS & PROCEDURE

This Order establishes procedures to be utilized by practitioners when they have agreed to the mediation of disputes in a matter pending in the Northern District of Georgia Bankruptcy Court and shall supersede the “Mediation Procedures” provided on the Court’s website at <https://www.ganb.uscourts.gov/mediation-procedures>.¹

1.0 Private mediation

1.0.1 Necessity of Court Order

Parties may engage in mediation with a private mediator without obtaining a court Order. However, a court Order may be necessary or appropriate in some instances, such as when the mediator will receive compensation from a bankruptcy estate. Thus, an “estate party” (that is, a bankruptcy trustee in a case under any Chapter; the debtor in a Chapter 13 case; or, a debtor-in-possession, examiner, or committee in a Chapter 11 case) must file an application for approval of the mediator’s compensation. After filing the application, the estate party shall advise the assigned judge’s staff of the filing of the motion and request direction as to whether a hearing will be necessary. If a hearing is necessary, the judge’s staff will schedule same and provide notice to all individuals identified by the estate party.

1.0.2 Request for Stay

The parties may request the assigned judge to stay the pending litigation and to reschedule

¹ The procedures contained within this Order do not address mediation when the parties have not agreed to it.

discovery or other deadlines so that the parties can concentrate on settlement and avoid the expense and distraction of prosecuting or defending the litigation while they are engaged in the mediation process.

1.0.3 Consent Order Regarding Terms of Mediation

In the event the parties who engage in private mediation have signed a Mediation Agreement setting forth the terms, conditions, and procedures for the mediation, the parties may request that the assigned judge enter a Consent Order incorporating some or all of the provisions of the Mediation Agreement.

If the parties do not execute a Mediation Agreement, they may request that the court enter a Consent Order that prescribes the terms, conditions, and procedures for the mediation. If the parties desire an Order with regard to these or other matters relating to the mediation, they must contact the assigned judge's staff for direction as to whether the parties should submit a proposed Consent Order or whether the judge will schedule a status conference or hearing. If the dispute is in an adversary proceeding, the Consent Order should be prepared for entry in the adversary proceeding.

If the parties do not desire an Order with regard to the mediation, no Order is necessary for the parties to engage in private mediation.

2.0 Mediation by a Bankruptcy Judge

2.0.1 Selection of Active or Recall Status Bankruptcy Judge

The bankruptcy judge assigned to pending litigation may permit parties to mediate the dispute before another bankruptcy judge in the District or a former bankruptcy judge from the District that has been recalled for purposes of conducting mediations. It is permissible for the parties to agree on and request that a particular bankruptcy judge be designated to serve as the mediator. If one of the parties objects to a particular judge serving as mediator, they may jointly make that known to the assigned judge, *without identifying which party opposes or prefers any particular judge.*

When parties desire to have a bankruptcy judge mediate their dispute, they must jointly advise the assigned judge of that desire and of their agreement, if any, with regard to the selection of another bankruptcy judge to serve as mediator. The parties should contact the assigned judge's staff to determine the procedures the assigned judge follows with regard to such a request. The assigned judge will give direction as to whether the parties should submit a joint stipulation agreeing to mediation, an application for mediation before a bankruptcy judge, or a proposed Consent Order. Under no circumstances should the parties contact the judge the parties desire to serve as mediator unless and until the assigned judge has approved the mediation and determined the selected judge's willingness and availability to serve as the mediator.

If the assigned judge determines that mediation before another bankruptcy judge is appropriate, the assigned judge will contact the selected judge to determine his or her availability. If the parties have not expressed a preference, the assigned judge will contact other judges to determine their availability. Once the assigned judge has determined the availability of another judge, the assigned judge will enter an appropriate Order designating the other judge as a settlement judge to serve as mediator.

2.0.2 Reference Order

The Order referring the matter to the selected bankruptcy judge typically contains confidentiality provisions, prohibitions on admissibility of statements made during the mediation process, and express authorization of *ex parte* contacts with the mediation judge, as the nature of mediation demands such contacts.

2.0.3 Judicial Immunity and Other Protections.

Fed. R. Bankr. P. 7016, incorporating Fed. R. Civ. P. 16(c)(2)(I), applies in each adversary proceeding or contested matter in which a settlement judge is appointed. Fed. R. Bankr. P. 9014(c). The appointment of a settlement judge is an assignment of the subject matters by the presiding judge to the

settlement judge solely for the purpose of convening “pretrial conferences” with a goal to reach a settlement. Each bankruptcy judge appointed as a settlement judge is so appointed because of a judicial position as an active or recall status United States Bankruptcy Judge and acts in such capacity. By serving as a settlement judge, such judge performs judicial duties. Accordingly, each settlement judge and all persons assisting a settlement judge have full, unqualified judicial immunity, as well as all other privileges, immunities, and protections accorded to a United States Bankruptcy Judge and to judiciary employees, regarding any matters arising from or related to such judge’s role as settlement judge.

All parties participating in the settlement process automatically:

- (a) waive and are unable to assert against the settlement judge or any court employees assisting with the settlement process any claims or causes of action that arise from or relate to the settlement process; and
- (b) waive and are unable to seek to compel from the settlement judge or from any court employees assisting with the settlement process any oral or written testimony, document production (including, without limitation, any records, reports, summaries, notes, communications, or other documents received or made by the settlement judge or any court employees while serving in such capacity), or other participation whatsoever in any judicial, arbitral, or other proceeding of any kind.

The settlement judge may, in his or her sole discretion, require that the parties sign an agreement memorializing the above understandings, among other appropriate provisions, before agreeing to serve as a settlement judge. The assigned judge may also direct the parties to submit a proposed Consent Order substantially in the form attached to these procedures. The parties may request additional or different provisions as may be appropriate under the circumstances.

2.0.4 Post Approval Procedures

If the assigned judge approves mediation before another judge, the mediation (settlement) judge will contact the parties with regard to procedures and scheduling for the mediation session. The assigned judge and the settlement judge maintain strict confidentiality. Thus, the settlement judge will not report anything about the mediation to the assigned judge other than whether the dispute is or is not

settled.

Parties requesting mediation with an active or recall status bankruptcy judge may also request that the assigned judge enter Orders with regard to a stay of deadlines for discovery and other matters in the pending litigation, as previously discussed in Section 1.0.2.

3.0 Motions to Require Mediation

Because mediation is a voluntary process, the Local Rules of the Bankruptcy Court for the Northern District of Georgia do not contain procedures for mandatory mediation or for the filing of a Motion to Compel Mediation. A party may, however, file a Motion to Require Mediation or a request for a status conference for the purpose of discussing the possibility of mediation. A party filing such a motion or request should contact the assigned judge's staff for direction as to the procedures the assigned judge follows with regard to such requests.

4.0 Effective Date

This Order is effective immediately.

IT IS SO ORDERED this 3rd day of March 2025.



Barbara Ellis-Monro
Chief United States Bankruptcy Judge
For the Court

APPOINTMENT & CONSENT FORM OF ORDER

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
[Name of Division] DIVISION**

<p>In re:</p> <p><i>[Debtor Name],</i></p> <p style="text-align: center;">Debtor.</p> <hr/> <p><i>[Plaintiff/Movant Name],</i></p> <p style="text-align: center;">Plaintiff(s)/Movant(s),</p> <p style="text-align: center;">v.</p> <p><i>[Defendant(s)/Respondent(s) Name],</i></p> <hr/> <p style="text-align: center;">Defendant(s)/Respondent(s).</p>	<p>Case No. <i>[Case Number]</i></p> <p>Adversary No. <i>[Case number]</i></p>
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**ORDER AUTHORIZING AND DIRECTING MEDIATION
AND APPOINTING SETTLEMENT JUDGE**

The parties have requested that they be authorized to participate in mediation with regard to the issues in this proceeding. It appears that the most productive form of mediation is to designate an active or recall status bankruptcy judge with no assignment or responsibility for these proceedings as a settlement judge to serve as a neutral mediator and that Bankruptcy Judge **[full name of mediating judge]** is qualified and suitable to serve in that capacity.

For good cause shown, it is hereby **ORDERED** as follows:

1. The parties to this proceeding shall mediate the issues and disputes presented in these proceedings. Bankruptcy Judge **[Surname of mediating judge]** is designated as a settlement judge with regard to this matter for the purpose of conducting mediation proceedings as the neutral mediator. Such mediation shall be conducted at a time and place and in accordance with procedures mutually agreed upon by the parties and Judge **[Surname of mediating judge]**.

2. Because Judge **[Surname of mediating judge]** will be serving as the neutral mediator in this matter and because the nature of the mediation process requires *ex parte* contacts and communications between the neutral mediator and each of the sides, the prohibitions of FED. R. BANKR. P. 9003 do not apply to communications among the parties, their attorneys, and Judge **[Surname of mediating judge]** in connection with the mediation proceedings. The parties and their attorneys may, therefore, have *ex parte* communications with Judge **[Surname of mediating judge]** in his or her capacity as the neutral mediator in connection with the mediation proceedings.

3. All communications made by the parties or their attorneys to each other or to Judge **[Surname of mediating judge]** in connection with the mediation process, the conduct and demeanor of the parties and their counsel during the mediation, and any documents prepared or produced in connection with the mediation process, including Judge **[Surname of mediating judge]**'s notes or records, shall be confidential and shall not be admissible as evidence or the subject of any discovery in any proceeding (unless admissible or discoverable without regard to the mediation). The mediation sessions and any conferences or proceedings in connection therewith shall be treated as compromise negotiations for purposes of the Federal Rules of Evidence, the Georgia Rules of Evidence, or any rules of evidence of any other jurisdiction. No record will be made of the mediation proceedings. Judge **[Surname of mediating judge]** is disqualified from appearing as a witness in any matter, and shall not be called as a witness, with regard to the mediation or any matter arising out of or related thereto.

4. Fed. R. Bankr. P. 7016, incorporating Fed. R. Civ. P. 16(c)(2)(I), applies to all matters that are the subject of this Order. Fed. R. Bankr. P. 9014(c). The appointment of **[Surname of mediating judge]** is an assignment of the subject matters by the assigned judge to the Settlement Judge solely for the purpose of convening "pretrial conferences" with a goal to reach a settlement. The Settlement Judge

is appointed because of their judicial position as an active or recall status United States Bankruptcy Judge and acts in such capacity. By serving as a settlement judge, the Settlement Judge performs judicial duties. Accordingly, the Settlement Judge and all judiciary employees assisting the Settlement Judge have full, unqualified judicial immunity, as well as all other privileges, immunities, and protections accorded to a United States Bankruptcy Judge and to judiciary employees, regarding any matters arising from or related to the Settlement Judge's role as settlement judge.

5. By participating in the settlement process, all parties automatically:
- a) waive and are unable to assert against the Settlement Judge or any judiciary employees assisting with the settlement process any claims or causes of action that arise from or relate to the settlement process; and
 - b) waive and are unable to seek to compel from the Settlement Judge or from any judiciary employees assisting with the settlement process any oral or written testimony, document production (including, without limitation, regarding any records, reports, summaries, notes, communications, or other documents received or made by the Settlement Judge or any judiciary employees while serving in such capacity), or other participation whatsoever in any judicial, arbitral, or other proceeding of any kind.

The Settlement Judge may, in the Settlement Judge's sole discretion, require that the parties sign an agreement memorializing the above understandings, among other provisions, before agreeing to serve as a settlement judge.

[End of Order]

[If Consent Order, names and signatures of consenting attorneys may be added.]