

United States Bankruptcy Court Northern District of Georgia

Mediation Procedures

The United States Bankruptcy Court for the Northern District of Georgia encourages parties to engage in mediation to resolve disputes in adversary proceedings and contested matters. Parties may agree on the use of a private mediator, or they may request that one of the bankruptcy judges serve as the mediator. The following sets forth general guidelines for parties to follow when they have agreed to the mediation of disputes in a matter pending in the Northern District of Georgia. The guidelines do not address mediation when the parties have not agreed to it.

Private mediation

Parties may engage in mediation with a private mediator without the necessity of a court order. Nevertheless, a court order may be necessary or appropriate in some instances.

If the mediator will receive compensation from a bankruptcy estate, court approval is required. 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 should advise the assigned judge’s staff of the filing of the motion and request direction as to whether a hearing will be necessary and, if so, the scheduling of the hearing and the persons who must receive notice of it.

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

Parties who engage in private mediation typically sign a mediation agreement, often prepared by the mediator, that deals with 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. For example, the parties may wish to have an order containing provisions that preserve the confidentiality of communications during the mediation process. (Of course, if a fact is disclosed during mediation that can be proved through other evidence, confidentiality restrictions do not prevent admission of such other evidence to prove the fact.). 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 should 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.

Mediation by a bankruptcy judge

The bankruptcy judge assigned to pending litigation may permit parties to mediate the dispute before another bankruptcy judge in the District. It is permissible for the parties to agree on and request that a particular bankruptcy judge be designated to serve as the mediator.

Because mediation is a voluntary process that depends on the agreement of the parties and their confidence in the neutrality and expertise of the mediator, the parties must be free to select their own mediator. If one of the parties objects to a particular judge serving as mediator, they may jointly make that known, but no one should state to the assigned judge 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.

The order 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, because the nature of mediation demands such contacts. The assigned judge may 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 in the circumstances.

If the assigned judge approves mediation before another judge, the mediation judge will contact the parties with regard to procedures and scheduling for the mediation session. The assigned judge and the mediation judge maintain strict confidentiality. Thus, the mediation 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 a 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 discussed in the preceding section.

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 a request.

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

IN RE:	:	Chapter ____
	:	
[Name of Debtor(s)]	:	Case No. ____
Debtor(s).	:	
_____	:	
	:	
[Name(s) of Plaintiff(s)/Movant(s)]	:	
	:	
Plaintiff(s)/Movant(s),	:	
vs.	:	Adversary No. _____
	:	
Name(s) of Defendant(s)/Respondent(s)]	:	
	:	
Defendant(s)/Respondent(s)	:	

ORDER AUTHORIZING AND DIRECTING MEDIATION

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 a current 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 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 in 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.

[End of Order]

[If consent order, names and signatures of consenting attorneys may be added.]