

BANKRUPTCY ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Instructions for Parties

Important, please note: This instruction sheet should be used in complying with the requirements of Local Bankruptcy Rule LBR 9019-11 to discuss alternative dispute resolution options with clients.

The United States Bankruptcy Court for the Western District of Michigan (the “Court”) has established an alternative dispute resolution program known as the Bankruptcy Alternative Dispute Resolution Program (the “Program”). This information is provided to you because you are, or may be, a debtor or creditor in a bankruptcy case, a party to an adversary proceeding, or counsel to a party involved in a bankruptcy case or an adversary proceeding, and may find the Program useful.

Pursuant to LBR 9019-11 in an adversary proceeding, or whenever ordered by the Court in other matters, counsel shall provide a copy of this instruction sheet to their client and discuss whether their case or dispute might benefit from any of the available dispute resolution options under the Program.

The Program offers a means to resolve disputes quickly, at less cost and often without the stress and pressure of litigation. The Program utilizes the services of qualified Neutrals to assist the parties in resolving their dispute. In most instances, participation in the Program is voluntary and the parties choose the dispute resolution format that best suits their needs. However, judges have the right to order parties to try using mediation to resolve their disputes. Common alternative dispute resolution methods include mediation, negotiation, and case evaluation.

Matters Which May Be Referred to the Program

Subject to a few exceptions (see, LBR 9019-4), the Program is available to parties, whether or not represented by counsel, in all controversies arising in an adversary proceeding, contested matter or other dispute in a bankruptcy case.

Cost

For mediation, Neutrals may charge their customary hourly rates for their mediation services. At the discretion of the Neutral, the fee may be waived in whole or in part (for example, if a party cannot afford the fee). Neutrals

are expected to devote a reasonable amount of time assisting the parties in attempting to resolve disputes.

Procedure for Referring a Matter to the Program

The Local Bankruptcy Rules governing the Program are located at LBR 9019-1 et seq. Copies of the Program Rules are available from the Clerk's Office or the Court website at www.miwb.uscourts.gov > Rules and Forms > Bankruptcy ADR Program.

The Court may refer a matter to the Program at any time, but typically such a referral will be made at a Pretrial Conference, a Status Conference or at a hearing. Additionally, the parties may, at any time, agree to mediate a dispute without any court intervention or submit a stipulated order requesting a matter be referred to the Program. A stipulated order shall state all parties to the dispute agree to the referral.

The following steps shall be taken when a matter is referred to the Program by the Court or upon the request of the parties:

- 1) The parties to a dispute are to confer and select a Neutral who offer their ADR services in the geographic area desired by the parties. A biographical listing of all Neutrals, and a separate list showing the availability of each Neutral by geographic area, are available for reference in the Clerk's Office and posted outside each courtroom, or may be obtained from the courtroom deputy or the Court website at www.miwb.uscourts.gov > Rules and Forms > Bankruptcy ADR Program > Qualified Neutrals. Selection of a Neutral may be made from this list or, by agreement of all parties, any other person may serve as neutral. The parties may wish to contact a Neutral to determine his or her current availability to undertake a Program referral.
- 2) After selection of a Neutral, the parties must notify the court of their selection of an ADR method and their selection of any neutral(s). If the submitting party is **not** a CM/ECF electronic filer with this court, such party shall submit **two paper copies** of notification, together with a self-addressed, postage-paid envelope. The Clerk's Office will use the postage-paid envelope to mail the submitting party a copy of any designation of neutral(s) prepared by the court.

- 3) Upon receipt of the signed Order referring the matter to Program, the submitting party shall immediately serve a copy of the Order on the Neutral, the Alternate Neutral and all parties to the dispute.
- 4) Upon receiving a copy of the signed Order, the appointed Neutral will contact the parties to determine a time, place and format for a Program conference. Possible formats include:

Mediation - A flexible non-binding, confidential process in which the Neutral functions as a Neutral mediator to facilitate negotiations among the parties to help them reach a settlement.

The mediator's goals include improving communication across party lines, helping parties articulate their interests and understand those of their opponent, probing the strengths and weaknesses of each party's legal positions, helping identify areas of agreement and generating options for a mutually agreeable resolution to the dispute. The mediator generally does not give an overall evaluation of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options often by going beyond the legal issues in the controversy.

Case Evaluation - The parties and their counsel, in a confidential session, present summaries of their dispute to and receive a non-binding assessment from a panel of three Neutrals with subject-matter expertise. As an evaluator, the Neutrals may also help identify areas of agreement, provide case-planning guidance and, if requested by the parties, settlement assistance. Case evaluation is only ordered upon the consent of all parties to the dispute.

There are two types of case evaluation:

1. **Standard Case Evaluation.** In Standard Case Evaluation, the ADR administrator will select three neutral case evaluators from a panel maintained by the Court. Each party pays \$100 to each of the three case evaluators who will convene a case evaluation hearing with the attorneys for the parties. The case evaluators listen to the arguments of counsel and consider their written submissions and exhibits, but no witnesses may testify and clients do not attend without the prior permission of the panel neutrals.

2. **Blue Ribbon Case Evaluation.** Like standard case evaluation except parties select three neutrals who charge their customary hourly rates.

The formats described here are non-binding, voluntary, and confidential. Other formats, with the exception of arbitration, may be used by agreement and at the discretion of the parties and the Neutral.

All rules, instructions, certifications, forms, lists, orders and other documents and information necessary to comply with the Program requirements are available on the Court website at www.miw.uscourts.gov > Rules and Forms > Bankruptcy ADR Program. If you have any questions, please contact the Court Clerk's Office.