

(b) Persons seeking to be members of the Panel must submit a letter requesting same. Said letter shall include the regular hourly rate charged by that person for mediation services and be accompanied by a Curriculum Vitae which demonstrates the person's experience, competence and acceptability to serve on the Panel. Those present members of the Appellate Mediation Panel do not have to re-apply.

(c) Following selection, the Panel member's relationship as a mediator is solely with the parties to the appeal, except that they are subject to certain reporting requirements to the Judges, Magistrate Judges and Clerk of this Court.

(d) The Clerk of this Court shall continue to manage the Appellate Mediation Panel. Mediations recommended for referral to the Panel by a Magistrate Judge as described herein in paragraph 2 shall be conducted by members of the Panel.

2. Referral for Mediation

(a) All bankruptcy appeals shall be referred to a Magistrate Judge for initial review and discussion with counsel or the parties to determine the appropriateness of mediation for the case, pursuant to 28 U.S.C § 636 (b).

(b) If a Magistrate Judge determines that mediation is appropriate, the Magistrate Judge shall issue an order either retaining the matter for mediation or recommending to the assigned Judge that the matter should be referred to a Panel member.

i. Deferral of Briefing: All briefing in connection with the appeal and all motion practice on appeal shall be deferred during the pendency of mediation unless the Court determines otherwise. A referral to mediation, however, shall not

defer or extend the time for ordering any necessary transcripts.

ii. If mediation is determined not to be appropriate by the Magistrate Judge, the assigned Judge will issue an order withdrawing the matter from mediation and the case will proceed through the appellate process.

(c) Mediation Referred to a Magistrate Judge: Referral for mediation to a Magistrate Judge will proceed in the usual manner as mediation for other matters occurring in this Court. In addition to any other materials requested by the Magistrate Judge, joint exhibits for the mediation statements shall include any judgment or order on appeal and any opinion or memorandum issued by the Bankruptcy Court. At the conclusion of the mediation process, if settlement is not reached, the Magistrate Judge will issue an order recommending the matter be withdrawn from mediation, and the case will proceed through the appellate process.

(d) Mediation Referred to the Panel: Any referrals to the Panel shall proceed as follows:

i. After notification, the Clerk will assign the matter to a Panel member on a rotating basis.

ii. The Panel member shall have seven (7) days from the time of notification by the Clerk to accept or decline the assignment as mediator.

iii. The Clerk will provide the Panel mediator with a copy of the judgment or order on appeal, any opinions or memoranda issued by the Bankruptcy Court, any relevant motions and all statements by the parties of the issues to be presented on appeal.

iv. Within five (5) days of accepting the mediation assignment, the

Panel mediator shall contact the parties to notify them of his/her appointment and to set up a conference call to establish a schedule for mediation.

v. By the date set by the Panel mediator, but no later than forty-five (45) days after notification by the Clerk of the appointment, each counsel or party shall prepare and submit an original and one (1) copy to the Panel mediator a confidential position paper, providing counsel's or the party's views on the key facts and legal issues of the case, the primary factors and issues relating to settlement, a statement of the motions filed in this Court and their status, and a candid discussion of the party's position on settlement. Page limitations on the submissions may be determined by the Panel mediator. The position papers shall be submitted directly to the Panel mediator and, unless otherwise agreed by the Panel mediator and the parties, shall not be served on opposing counsel or party. The parties' respective positions on settlement shall remain confidential and shall be shared only with the Panel mediator. Position papers and other documents prepared for mediation are confidential and shall not be filed with the Clerk nor become part of the record of the case.

vi. Unless otherwise agreed by the Panel mediator and the parties, within fourteen (14) days after receipt of the position papers, the Panel mediator will notify and confirm with counsel or the parties the time, date and place of the mediation session, including whether it will be conducted in person. Within seven (7) days after confirmation of the mediation date, the Panel mediator shall file with the Clerk, with a copy to the Magistrate Judge, a notification as to the date for mediation.

vii. Unless the Panel mediator directs otherwise, mediation

sessions must be attended in person by senior counsel for each party responsible for the appeal and by the party/parties and/or decisionmaker(s) of the parties, who must have full authority to act on behalf of the parties, including the authority to negotiate a resolution of the matter and to respond to developments during the mediation process.

Full authority means those participants on behalf of a party who are able to make independent decisions and have a knowledge or understanding of the dispute and/or the business objectives/operations of their company to generate and consider solutions and/or to be able to address the negotiation dynamics in mediation. It is *not just* settlement authority, that is, to make an offer or to accept an amount.

viii. If settlement is not reached during the initial mediation session, but the Panel mediator believes further mediation sessions or discussion would be productive, the mediator may conduct additional mediation sessions in person or telephonically. Within seven (7) days of the initial mediation session, the Panel mediator shall file a notification with the Clerk, with a copy to the Magistrate Judge, advising whether the mediation process is concluded and if settlement was reached. If the mediation process is continuing, the Panel mediator shall file a notification within the time noted herein with the Clerk, with a copy to the Magistrate Judge, advising of the date(s) for any further mediation sessions.

Within five (5) days of the final mediation session, the Panel mediator shall file a notification with the Clerk, with a copy to the Magistrate Judge, advising that mediation is concluded and whether settlement was reached. If settlement was not reached, the Magistrate Judge will issue an order recommending the matter be withdrawn from mediation, and the case will proceed through the appellate process.

ix. Mediation proceedings are confidential. All participants in mediation, including the Panel mediator, are prohibited from disclosing statements made or information developed during the mediation process. Disclosures by counsel or other persons attending mediation are limited to clients, principals or co-counsel only upon receiving proper assurances that the recipients will honor the confidentiality of the information.

x. Fees of Panel Mediators: One-half of the Panel mediator's fees shall be paid by the appellant(s) and one-half of such fees shall be paid by the appellee(s). The Panel mediator may request and shall receive an advance payment from each party which shall be paid prior to the beginning of mediation.

3. Referral of Pending Appeals to Mediation

At any time during an appeal pending as of the date of this order, the assigned Judge may refer the appeal for mediation. The procedures set forth herein are applicable to matters referred for mediation under this paragraph.

4. Confidentiality

In addition to any provision herein or any order by a Magistrate Judge addressing confidentiality, use of any information obtained as a result of the mediation process as a basis for any motion or argument to any court is prohibited. Mediation proceedings shall be considered compromise negotiations under FED. R. EVID. 408. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential.

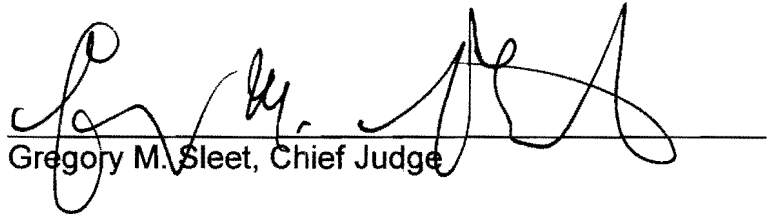
5. Settlement

(a) No party shall be bound by statements or actions during mediation

unless settlement is reached.

(b) If settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

(c) A stipulation of dismissal of the appeal must be filed by counsel or the parties within thirty (30) days after settlement is reached.



Gregory M. Sleet, Chief Judge