

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)
)
RULE 7016-1 MEDIATION) GENERAL ORDER 11-01
PROCEDURES and amendment to)
RULE 9014-1 CONTESTED MATTERS)

This General Order, effective May 1, 2011, amends the Nebraska Rules of Bankruptcy Procedure adopted on June 15, 2010 as new Rule 7016-1 Mediation Procedures and new section (C) to Rule 9014-1 Contested Matters. The Court will incorporate this General Order in the Nebraska Rules of Bankruptcy Procedure during the next periodic update.

A. The Mediation Process. Upon its own initiative, the stipulation of the parties, or the motion of a party or other interested person, the Court may order the parties to engage in mediation. If the Court orders mediation on its own initiative, a party may within 7 days file an objection to the mediation and request a hearing.

1. If mediation is stipulated or ordered, the parties shall within 7 days thereafter choose one mediator from the Court’s Mediation Panel. If that mediator is not available or has a conflict that the parties do not waive, the parties shall have 3 additional business days to choose another mediator. The parties may request the Court’s assistance in selecting a mediator if they cannot agree.

2. When a mediator is chosen, the parties shall submit a proposed mediation order for entry, unless the Court has already entered a mediation order. If a mediation order has not been entered by the time of the mediation, the mediator shall submit a proposed mediation order.

3. Mediation may be ordered at any time during the case. Mediation shall be completed by the date noted in the order. If the order does not specify a date, then mediation shall be completed within 14 days after the entry of the mediation order, at such time as the parties may agree or within such other time as the Court may otherwise fix.

4. The total fees and expenses of the mediator shall be equally paid by all parties to the mediation, unless otherwise agreed by the parties or ordered by the Court.

a. Each of the parties to the mediation process shall pay \$200.00 to the mediator before or at the commencement of the mediation session as an advance retainer, unless otherwise ordered by the Court.

b. The Nebraska Federal Practice Fund applies to bankruptcy mediations, as specified in Part III(b) thereof: “The Fund may also be used to pay mediation

expenses of litigants who, although not proceeding *in forma pauperis* or with appointed counsel, are without adequate funds to pay such expenses themselves, as found by the assigned bankruptcy . . . judge.”

5. All proceedings and writings incident to the mediation shall be privileged and confidential, and shall not be reported or placed in evidence. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation. No party shall be bound by mediation unless a settlement is reached, reduced to writing and executed by all parties. If necessary, the parties shall file a motion for approval of the settlement under Fed. R. Bankr. P. 9019 promptly after it is executed.

6. The mediator shall have the duty and authority to establish the mediation process, including the submission of documents, the attendance of parties with authority to settle and the procedure governing the mediation. The mediator may provide the attorneys for the parties or unrepresented parties with a written settlement memorandum. Such memorandum shall be governed by the first sentence of the preceding subparagraph and shall not be filed or made available to the Court, unless and until it is executed by all parties. The mediator shall not be called as a witness.

7. Within 7 days after the initial mediation session, the mediator shall file an interim or final certification: (a) demonstrating compliance with the mediation requirements of this Rule, (b) stating whether a settlement was achieved, without referring to any substantive matters involved in the mediation, and, if not, whether further mediation efforts continue, and (c) stating whether mediation fees have been paid.

B. The Mediation Panel. Individuals may apply to the Court for appointment to the Mediation Panel, and the Court shall make such appointments as it deems necessary from time to time.

1. Before serving as a mediator, an individual shall have participated in at least 30-hours of training in alternative dispute resolution, according to the requirements of the Nebraska Dispute Resolution Act, and shall provide in his/her application to the Court a certificate of such training.

2. Individuals who wish to serve on the Mediation Panel shall inform the Clerk in writing and shall provide the Clerk with information requested on the Mediation Panel Application form and such additional information that the applicant or the Court deems pertinent.

3. Each appointment of an individual to the Mediation Panel shall be for a period of 5 years, at which time a mediator may apply for a renewed 5-year appointment.

4. A list of the mediators on the Mediation Panel is maintained by the Clerk and is available on the Court’s website.

5. The Court may meet periodically with the panel of mediators or its chair persons as necessary to discuss improving the mediation process.

C. State Mediation Centers. A mediation center approved by the State of Nebraska may, upon its written request, be appointed by the Court to the Mediation Panel, including Nebraska Farm Mediation Act centers (for mediating Chapter 12 and other farm-related disputes) and Nebraska Dispute Resolution Act centers (for mediating Chapter 13 and other consumer disputes).

D. Judicial Mediation. Upon a joint request by the parties to a dispute, the Court may ask a Bankruptcy Judge from another jurisdiction to provide dispute resolution services for that particular dispute.

Rule 9014-1 Contested Matters is amended to add section (C) with regard to new Rule 7016-1 Mediation Procedures.

C. The mediation provisions of Neb. R. Bankr. P. 7016-1 shall apply to disputes arising in contested matters.

IT IS SO ORDERED.

DATED: April 11, 2011

BY THE COURT:

/s/ Thomas L. Saladino
Thomas L. Saladino, Chief Bankruptcy Judge

/s/ Timothy J. Mahoney
Timothy J. Mahoney, Bankruptcy Judge