

LBR 9019.2

ALTERNATIVE DISPUTE RESOLUTION

The court's primary ADR procedure is mediation facilitated by a private mediator chosen by the parties. The mediation process is intended to improve communication among the parties and provide the opportunity for greater litigant involvement in the early dispute resolution, with the ultimate goal of securing the just, speedy and inexpensive disposition of civil cases.

(a) General Guidelines for Alternative Dispute Resolution Processes.

(1) Any procedure used to resolve a dispute pending before the United States Bankruptcy Court for the District of Kansas is governed by D. Kan. Rule 16.3, any other rules or guidelines adopted by the United States District Court for the District of Kansas, and this rule.

(2) The judge to whom a case has been assigned may, at the earliest appropriate opportunity, encourage or require the parties and their attorneys to attempt to resolve or settle the dispute using an extrajudicial proceeding, such as mediation, a case settlement or evaluation conference, or another alternative dispute resolution process unless, in the judge's discretion, it is determined that:

(A) it would be futile;

(B) the mediator indicates the case is inappropriate for the process;

(C) the parties agree that a request for procedural action by the court will facilitate settlement; or

(D) in the opinion of the mediator or court official, there is a danger of physical harm to any party connected with the process.

(3) The judge may refer a case for an extrajudicial proceeding to be supervised by any other judge of the district or bankruptcy court, any retired district or bankruptcy judge, or any neutral attorney. If the parties mutually agree on a neutral non-attorney, the judge may refer the case to that person. The person to whom the case is referred will generally be called "mediator" in the balance of this rule.

(4) The mediator will set and convene the first meeting between the participants, and will file with the court a report on the status of the alternative dispute resolution process within 45 days of the initial appointment. As part of the mediation, case settlement, or evaluation conference process, the parties, their attorneys, and the mediator discuss every aspect of the case that bears on its settlement. The mediator will meet privately with each party and the party's attorney to discuss the mediator's evaluation of the case. Except for good cause, it is mandatory that each party have a representative with settlement authority (as defined in D. Kan. Rule 16.3) attend the mediation, case settlement, or evaluation conference process. The court may make this paragraph applicable to any other alternative dispute resolution process.

(5) No written statements or memoranda parties submit to the mediator under this rule will be placed in the court file. The mediator must not communicate to the judge any matter concerning the proceeding except whether the case has settled or that a party or attorney has failed to appear. Fed. R. Evid. 408 governs the admissibility of statements, memoranda, and other communications made during or in connection with the extrajudicial process.

(6) Upon conclusion of the alternative dispute resolution process, either by settlement or by impasse, the mediator will communicate to the court the results of the mediation.

(b) Payment Procedures for Court-Approved Mediation in Bankruptcy Cases.

(1) *Allowable Expenses.* Allowable expenses include the cost of the mediation session at the rate negotiated by counsel and the mediator, plus mileage expenses if the mediator is required to travel, that the party is unable to pay, and that are not otherwise recovered in the action. The mediator's negotiated fee (including mileage) shall be divided equally between the parties unless otherwise agreed to and approved by the court.

(2) *Payment Procedure.* To qualify for payment, the mediation, as well as all expenditures, must be approved in advance by the court. Before incurring any reimbursable expense, the party must:

(A) complete a form, which is available from the clerk; and

(B) secure the requisite prior approval, in writing, by the bankruptcy judge to whom the case is assigned and, when required, by the chief bankruptcy judge.

(3) *Who Must Approve Expenditures.* The presiding judge may approve expenditures that total less than \$750, for the entire mediation. The chief judge of the court must approve expenditures that reach or exceed \$750.

(4) *Amount of Payment.* The District Court Clerk will pay the mediator such amount as the court approves.

(5) *Repayment.* Any payment from the Bar Fund must be repaid if money is recovered in the settlement, unless waived by the court.

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As amended 3/17/19 (formerly S.O. 17-2), 10/17/05, 3/17/05.