NO. 8 MEDIATION PROCEDURE, HARTFORD

CHAMBER'S ORDER NO. 1
(As Amended December 23, 1998)

THE HARTFORD COUNTY BAR ASSOCIATION COMMERCIAL LAW COMMITTEE PROJECT FOR VOLUNTARY MEDIATION OF CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER DISPUTES IN CASES PENDING IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF CONNECTICUT IN HARTFORD

1.0 SPONSORSHIP AND AUTHORITY

1.1 Sponsorship by the Hartford County Bar Association

The Commercial Law Committee of the Hartford County Bar Association has offered to sponsor and develop a pilot to encourage and promote the voluntary mediation of contested matters and adversary proceedings in cases pending in the United States Bankruptcy Court for the District of Connecticut in Hartford. The program envisions the appointment of qualified mediators who will serve on a voluntary, no-fee basis, to assist the parties and the court in resolving, through mediation, a wide variety of disputes that commonly arise in the form of adversary proceedings or contested matters before the Bankruptcy Court in Hartford. In coordination with the Continuing Legal Education Committee of the Hartford County Bar Association, it is expected that the Commercial Law Committee will also conduct Continuing Legal Education programs in order for volunteer mediators to meet the requirements hereinafter set forth.

This project is not designed to displace or compete with existing Alternative Dispute Resolution ("ADR") providers who already provide valuable services in Connecticut for a fee. Rather, this project is targeted at the many types of disputes that commonly arise in the Bankruptcy Court and for which the parties often are unwilling to consider, or unable to afford, fee-based mediation. The rationale for sponsorship of this pilot program for cases pending in the Hartford Bankruptcy Court is bases upon the regional location and interests of the Hartford

County Bar Association and its members who will serve on the mediation panel. If this program is successful, it is hoped that other local Bar Associations would likewise sponsor similar programs for voluntary mediation of matters pending in the Bankruptcy Courts in New Haven and Bridgeport.

1.2 Authority

LBR 9019-2 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Connecticut provides authority and guidance for the reference of cases to "voluntary ADR at any stage of the bankruptcy litigation deemed appropriate by the parties and the judge to whom the adversary proceeding or a contested matter has been assigned." A copy of LBR 9019-2 is attached hereto at Appendix A. This project envisions the referral of cases to voluntary mediation under the authority and procedures set forth in LBR 9019-2 and the procedures outlined hereafter. The following proposal is submitted to the Bankruptcy Court in Hartford for its consideration, comment and recommended adoption as a Chamber's Order.

2.0 REGISTER OF VOLUNTARY MEDIATORS AND APPLICATION PROCEDURE

2.1 Register of Qualified Volunteer Mediators

The Clerk of Bankruptcy Court in Hartford shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as mediators in contested matters and adversary proceedings in cases pending in the Bankruptcy Court in Hartford. All attorneys so registered as volunteer mediators shall be subject to the approval of the Bankruptcy Court and shall be selected from lists of attorneys who meet the qualifications hereinafter described.

2.2 Applications for Persons Wishing to Serve as Volunteer Mediators

Applicants who wish to serve as volunteer mediators for the Hartford Bankruptcy Court shall complete an application to the Bankruptcy Court. The application shall initially be submitted to and screened by the Commercial Law Committee of the Hartford County Bar Association whose sole function shall be to review applications to ensure that the applicants meet the qualifications set forth below. The application shall set forth the qualifications described herein and conform to the attached Appendix B.

2.3 Qualifications for Volunteer Mediators

In order to qualify for service as a volunteer mediator, an attorney shall certify to the Court that he or she meets the following minimum qualifications:

a. Is an active member of the State Bar of Connecticut, duly licensed to practice before the courts of the State of Connecticut and the Federal Courts for the District of Connecticut;

b. Has been admitted to practice in a state court for at least seven (7) years and in the Federal Courts for the District of Connecticut for at least six (6) years;

c. Has served as the attorney of record for at least three (3) bankruptcy cases from commencement through conclusion (i.e., confirmation of a plan or discharge); or, alternatively, has served as the attorney of record for at least five (5) adversary proceedings or contested matters in Bankruptcy Court from commencement through completion (i.e., judgment, order or stipulation settlement);

d. Has completed not less than four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution; or, alternatively, will complete not less than four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution within one (1) year of his or her appointment as a volunteer mediator.

e. Has not:

(1) Been suspended, or has had a professional license revoked, or has pending any proceeding to suspend or revoke such license; or

(2) Resigned from any applicable professional organization or voluntarily relinquished the right to practice law in any jurisdiction while an investigation into allegations of misconduct which would warrant suspension, disbarment or professional license revocation was pending; or

(3) Been convicted of a felony.

2.4 Removal from Register of Volunteer Mediators

A person shall be removed from the mediation register either at the person's request or by court order, which order may be with or without cause. If removed from the register by court

order, the person shall not be returned to the register absent court order obtained upon motion to the Bankruptcy Court and affidavit sufficiently explaining the circumstances of such removal and reasons justifying the return of the person to the register.

Any person who has not completed the required four (4) credit hours of Continuing Legal Education on mediation and/or alternative dispute resolution shall within one (1) year of the date of his or her original application submit to the Hartford County Bar Association Commercial Law Committee a certificate stating he or she has completed the required Continuing Legal Education credits identifying the sponsor of the course, the name of the course study, the date(s) of the course, and the number of credit hours completed. Failure to certify completion of this requirement shall result in the person being removed from the next list of eligible mediators submitted to the Clerk of the Bankruptcy Court in Hartford.

3.0 REVIEW OF APPLICATIONS AND SUBMISSION OF LIST OF ELIGIBLE MEDIATORS

3.1 Review of Application by Hartford County Bar Association

Applications shall be submitted to the Commercial Law Committee of the Hartford County Bar Association and shall be reviewed for compliance with the qualifications set forth above. Any incomplete applications or applications not meeting the criteria set forth above shall be returned to the applicant with an explanation of the reasons for being returned or with a request for completion of any missing information.

3.2 Submission of List of Eligible Volunteer Mediators to the Bankruptcy Court

A list of eligible mediators shall be submitted at least annually to the Clerk of the Bankruptcy Court by the Commercial Law Committee of the Hartford County Bar Association. Each such list submitted shall be subject to the review and approval of the Bankruptcy Court, and those volunteer mediators so approved by the Bankruptcy Court shall be placed on the mediation register maintained by the Clerk of the Bankruptcy Court.

4.0 ASSIGNMENT TO MEDIATION

4.1 Mediation to be Voluntary and at any Stage in the Proceeding

A case may be referred for voluntary mediation at any stage of the litigation deemed

appropriate by the parties and the judge whom the particular case has been assigned. If a case is to be assigned to mediation, the parties attending the pretrial conference, status conference or other hearing shall be presented with this Chamber's Order setting forth these rules governing mediation and the current list of eligible mediators. Unless otherwise ordered by the Court, any adversary proceeding, contested matter or other dispute may be referred to mediation.

4.2 Stipulation for Reference to Mediation

When agreement between the parties and the Court for a voluntary mediation referral has been reached, the parties shall file jointly for the Court's endorsement a "Stipulation for Reference to Mediation" in the form attached hereto as Appendix C. The original shall be retained in the Court's file. The Stipulation, subject to the Court's approval, shall specify: a) the scope of the mediation process (e.g. settlement of all or some of the issues, resolution of discovery schedules or disputes, narrowing the issues, etc.); b) the mediation provider (e.g. any qualified person or panel selected by the parties or the judge from the registry); c) the judicial proceedings, if any, to be stayed pending mediation (e.g. discovery matters, filing of motions, trial, etc.); d) the effect of the mediation (e.g. non-binding); e) the date or dates for the filing of a report by the mediator with the judge or for the completion of the mediation process; f) the special conditions, if any, imposed by the judge upon any aspect of the mediation process (e.g. the application of these rules governing mediation, requiring trial counsel, the parties, and/or representatives of insurers with settlement authority to attend the voluntary mediation fully prepared to make final demands or offers).

4.3 Selection of Volunteer Mediator from Register/Notification Procedure

The parties shall jointly select the names of at least two mediators from the register of eligible mediators maintained by the Clerk of the Bankruptcy Court who the parties believe not to have any conflicts of interest with the parties, the case or the matter in controversy. The parties shall designate which of the two mediators they wish to serve as an alternate in the event of the first mediator selected has a conflict of interest or is otherwise unable to serve. The Clerk of the Bankruptcy Court shall thereupon mail a copy of the Stipulation for Reference to Mediation to the first mediator selected from the register. In the event that there appears any conflict of

interest or other cause for declining the mediation, in the sole judgment of the mediator first contacted, the mediator shall notify the Clerk of the Bankruptcy Court and the Clerk of the Bankruptcy Court shall forthwith mail a copy of the Stipulation for Reference to Mediation to the alternate mediator designated by the parties. In the event the alternate mediator has a conflict of interest or is otherwise unable to serve, the alternate mediator shall forthwith notify the Clerk of the Bankruptcy Court and the parties.

5.0 MEDIATION PROCEDURE

5.1 Scheduling of Mediation

The volunteer mediator shall fix a time and place for the mediation conference, and all adjourned sessions, that is reasonably convenient for the parties, and shall give them at least 15 days written notice of the initial conference. The conference shall be set to begin as soon as practicable, but in no event more than 45 days after the mediator has been notified of his or her selection. The volunteer mediator may, upon written stipulation of the parties (filed with the Court), grant one continuance of the conference, which continuance shall not extend the time from notification of the mediator's appointment to the conference to a period longer than 75 days.

5.2 Case Summary to be Submitted to Volunteer Mediator

Each party shall provide the mediator with a completed case summary in the format attached hereto as Appendix D. Said case summary shall be served on the mediator and all other parties not less than seven (7) calendar days prior to the date noticed for the mediation conference as set forth in paragraph 5.1 above.

5.3 Attendance and Preparation Required

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

a. All liability issues;

b. All damage issues; and,

c. The position of his/her client relative to settlement.

5.4 Parties to Attend

All individual parties who reside within Connecticut shall personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, whose principal place of business is located in Connecticut, shall have a representative appear with authority to negotiate. Individuals and other parties who neither reside in Connecticut, nor have their personal place of business located therein, shall be available for conference with their counsel and mediator by telephone. The mediator shall decide when it is appropriate for the parties to be present in the conference room and when it is appropriate to meet with their counsel separately.

5.5 Mediation Proceedings Privileged

All proceedings or writings of the mediation conference, including the case summary, mediator's settlement recommendation, plus any statement made by any party, attorney or other participant, shall in all respects be privileged and not reported, recorded, placed in evidence, made known to the court or jury or construed for any purpose as an admission against interest. All writings, records, reports or other documents received by the mediator while serving in that capacity shall be confidential. By agreeing to submit their controversy to voluntary mediation in accordance with these rules, the parties agree that they shall not compel or require the volunteer mediator to appear or testify in any legal proceeding or judicial forum. Any party that violates this rule shall pay all fees and expenses of the mediator and other parties, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from the volunteer mediator. No party shall be bound by anything said or done at the mediation conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. In addition to the foregoing, Federal Rule of Evidence 408 shall apply.

5.6 No Service of Process at Site of Mediation

No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

5.7 Mediator's Recommendations to be Disclosed to the Parties

If the mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his or her client. The mediator shall have no obligation to make any written comments or recommendations, but may, in his or her discretion, provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in party, directly or indirectly, either to the Court or to the jury. The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the mediator is a qualified attorney who has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of trial.

5.8 Time Schedule for Mediation Activities

Subject to the time limitations set forth by Court Order in the Stipulation for Reference to Mediator and in these rules, the mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the fundamental purpose of these rules and the mediation is prompt dispute resolution.

6.0 WITHDRAWAL FROM MEDIATION

Any matter may be withdrawn from mediation by the judge assigned to the matter at any time upon a determination that for any reason the matter is not suitable for mediation. Any party in interest, the U.S. Trustee or the mediator may file a motion to withdraw a matter from mediation for cause.

7.0 PROCEDURE UPON COMPLETION OF MEDIATION SESSION

Upon the conclusion of the mediation session(s) conducted by the mediator where all parties are in attendance, the following procedure shall be followed:

a. After the mediation, the mediator shall file with the clerk within 10 days a certificate in the form attached as Appendix E indicating that the case has settled or not settled, unless the

parties agree to a more detailed report (e.g. stipulation of facts, narrowing of the issues and discovery procedures, etc.);

b. If the case settles, the parties shall (1) agree upon the appropriate moving papers to be filed for the Court's endorsement (Judgment, Stipulation For Dismissal, etc.,) and (2) submit the fully executed stipulation to the Bankruptcy Court for approval;

c. If a case does not settle but the parties agree to the narrowing of factual or legal issues, then the parties shall set forth those matters for endorsement or amendment by the Court.

8.0 IMMUNITY

The volunteer mediators shall be immune from claims arising out of acts or omissions incident to their service as court appointees in this mediation program in the same manner and to the same extent as if they were acting as parajudicial officers appointed by the court.

9.0 POST-MEDIATION CONFLICTS OF INTEREST

With respect to conflicts or interest, volunteer mediators and their law firms shall be governed by applicable law and rules of professional conduct, including Rule 1.12 of the Rules of Professional Conduct as adopted by the Judges of the Superior Court of Connecticut and made applicable by Rule 3(a) of the Local Rules of the Unites States District Court for the District of Connecticut and Rule LBR 1001-1(b) of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Connecticut.

9.1 Implementation

Original Chamber's Order No. 1 Governing Mediation of Contested Matters and Adversary Proceedings in Bankruptcy Cases became effective on April 1, 1996, and was made applicable to all bankruptcy cases and related adversary proceedings filed or pending in the United States Bankruptcy Court for the District of Connecticut in Hartford on or after that date. This amended Chamber's Order No. 1 is effective as of the date set forth below.

DATED:_____

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Robert L. Krechevsky
Judge
United States Bankruptcy Court