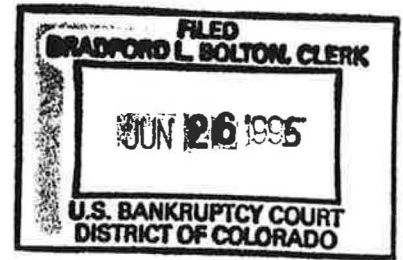


UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO



IN THE MATTER OF  
ALTERNATIVE DISPUTE  
RESOLUTION BY MEDIATION

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GENERAL PROCEDURAL ORDER NUMBER 1995- 1

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THIS MATTER arises *sua sponte* upon the desire of the Court to endorse and establish a uniform procedure for alternative dispute resolution by mediation. Accordingly, it is

**ORDERED** that:

1. **Voluntary Dispute Resolution.** This procedure shall apply to voluntary efforts of parties to resolve contested matters and adversary proceedings by mediation. Nothing in this Order shall prevent the parties from utilizing other forms of alternative dispute resolution other than mediation.
2. **Mediation Register.** The Clerk of the Bankruptcy Court shall establish and maintain a register of attorneys and other persons who desire to serve as mediators. To be included in such register, persons desiring to serve as a mediator shall submit a completed Application to Join Mediation Register in substantial conformity with the attached form. Such Application shall be maintained in the register for 3 years. The register shall be available for public view in the office of the Clerk during regular daily business hours.
3. **Mediation Referral.** Upon agreement of the parties or the Court's own motion, a matter or proceeding may be referred to mediation (a process by which the parties enter into one or more settlement negotiations with the help of a mediator in order to resolve their dispute).
  - a. Within 10 days of the order approving referral of the matter to mediation, the parties shall select a mediator and an alternate and file a certificate identifying the mediator and alternate, specifying the compensation arrangement, if any, for the mediator and confirming the mediator and alternate's willingness to serve.
  - b. At the discretion of the parties, mediators may be selected from the register maintained by the Court or from other sources.

- c. If the parties are unable to agree upon a mediator, the Court may enter such further orders as necessary to advance a mediation process or to deem it abandoned by the parties.
- d. Unless the parties and mediator otherwise agree, the mediator shall serve without compensation. Compensation of a mediator will be on such terms as are satisfactory to the mediator and the parties, subject to Court approval if the estate is to be charged with such expense. Any fee agreement entered into by a trustee or debtor-in-possession shall be submitted for Court approval in compliance with L.B.R. 202.
- e. Notwithstanding the assignment of a matter or proceeding to mediation, unless otherwise agreed to by the parties and ordered by the Court, no obligation of the parties, deadline or order shall be stayed during the mediation process.

**4. Mediation Process.**

- a. Upon consultation with the parties and their attorneys, the mediator shall determine the mediation process to be used, the time and place for mediation conferences, and the information to be submitted to the mediator. The mediator will give parties at least 15 days written notice of such process and the initial mediation conference. The initial mediation conference shall be set as soon after the order of referral as long in advance of any evidentiary hearing as practicable. In keeping with the goal of prompt dispute resolution, the mediation process shall be completed within 60 days, unless an extension is authorized by the Court.
- b. If an attorney has entered an appearance for a party, the attorney representing the party and the party shall participate in the mediation process.
- c. The mediator shall make no written reports or recommendations unless requested by both parties. No copy of such recommendation shall be filed with the Clerk or the Court. Other than the official mediator's notice of compliance and statement of mediation position, documents and statements made by the parties, attorneys and other participants presented or made during the mediation process shall, in all respects be confidential. No party shall be bound by any statement made or action taken at the mediation conference unless a settlement is reached, in which event the agreement shall be reduced to writing and submitted to the Court. Rule 408 of the Federal Rules of Evidence shall apply to all offers, promises, conduct, statements, whether oral or written, made in the course of the mediation process by the parties, their agents, employees, experts and attorneys, and the mediator.

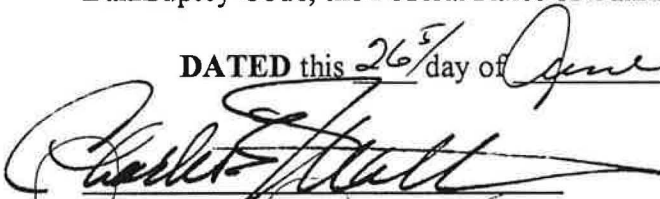
5. **Post-Mediation Procedures.** Within 10 days after the conclusion of the mediation process, the mediator shall file with the Court a Mediator's Notice of Compliance which shall be in substantial conformity with the form attached and serve it upon the parties. Upon filing of the mediator's notice, the mediation will be deemed terminated, the mediator excused and relieved of further responsibility in the matter without further Court order. If the parties have reached an agreement regarding the disposition of the matter or proceeding, they shall prepare and submit to the Court within 10 days of the filing of the mediator's report an appropriate stipulation and joint motion for approval for compromise of controversy.


6. **Withdrawal from Mediation.** Any matter or proceeding referred to mediation pursuant to these rules may be withdrawn from mediation by the presiding judge at any time upon a written determination that the matter is not suitable for mediation or that mediation has not been productive. Nothing in these rules shall prohibit or prevent any party in interest, the U.S. Trustee or the mediator from filing an appropriate motion to withdraw the matter from mediation.

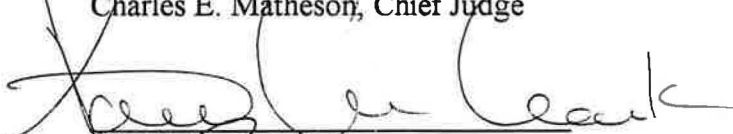
7. **Disqualification of Mediator.** Any person selected as a mediator may be disqualified if the mediator is not disinterested, holds an interest adverse to any party, for bias or prejudice as provided in 28 U.S.C. § 144 or under circumstances requiring disqualification of a judge pursuant to 28 U.S.C. § 455.


8. **Compliance with the Bankruptcy Code and Rules.** Nothing in this General Order shall relieve any debtor, party or the U.S. Trustee from complying with orders of this Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

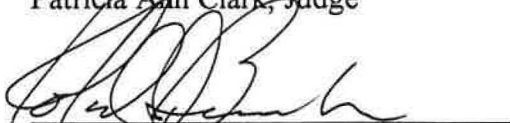
DATED this 26<sup>th</sup> day of June, 1995.

  
Charles E. Matheson, Chief Judge

  
Sidney B. Brooks, Judge

  
Patricia Ann Clark, Judge

  
Donald E. Cordova, Judge

  
Roland J. Brumbaugh, Judge

  
Marcia S. Krieger, Judge

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

**APPLICATION TO JOIN MEDIATION REGISTER**

Name: \_\_\_\_\_  
(Individual/Firm Name)

Address: \_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip)

Colorado State Bar Number: \_\_\_\_\_

Are you a member of the United States District Court for the District of Colorado? \_\_\_\_\_

Date of Admission: \_\_\_\_\_

Describe your familiarity with bankruptcy law and practice: \_\_\_\_\_

\_\_\_\_\_

Describe your experience in mediation: \_\_\_\_\_

\_\_\_\_\_

List ten bankruptcy matters in which you have either:

- a. Served as an attorney of record; or
- b. Served as a mediator.

<u>Case Title</u>	<u>Case Number</u>	<u>Role</u>	<u>Date</u>
1.			
2.			
3.			
4.			
5.			

- 6.
- 7.
- 8.
- 9.
- 10.

If selected as a mediator for purposes of an adversary or contested matter pending before the United States Bankruptcy Court for the District of Colorado, I, \_\_\_\_\_, swear or affirm that I will perform all obligations required by General Procedural Order Number 1995-\_\_\_\_ and will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as mediator under the Constitution and laws of the United States.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Forward to: Clerk, U.S. Bankruptcy Court  
U.S. Custom House  
721 - 19th Street  
Denver, Colorado 80202

[Caption as in Bankruptcy Official Form No. 16D]

**ORDER REFERRING MATTER OR PROCEEDING TO MEDIATION**

THIS MATTER comes before the Court upon the request of the parties for mediation and the parties having selected and agreed that \_\_\_\_\_ shall serve as mediator and \_\_\_\_\_ shall serve as alternate for the mediation process. It is hereby,

**ORDERED:**

1. \_\_\_\_\_ is appointed as mediator, and \_\_\_\_\_ is appointed as an alternate mediator should \_\_\_\_\_ be unable to serve in such capacity, to facilitate a resolution of this case. On or before \_\_\_\_\_ the mediator shall confirm acceptance of the matter for mediation failing which this Order is deemed vacated.

2. The mediator shall administer the mediation process in accordance with General Procedural Order Number 1995-\_\_\_\_\_.

3. The fee for the mediator shall be \_\_\_\_\_.

4. The mediation process shall be concluded and the mediator's Notice of Compliance shall be filed in this matter on or before \_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**BY THE COURT:**

\_\_\_\_\_  
United States Bankruptcy Judge

[Caption as in Bankruptcy Official Form No. 16D]

**MEDIATOR'S NOTICE OF COMPLIANCE**

I, \_\_\_\_\_, the Court appointed mediator, declare:

1. Date(s) of mediation: \_\_\_\_\_  
Continued Date (if applicable): \_\_\_\_\_
2. The Rules governing mediation have \_\_\_\_\_ have not \_\_\_\_\_ been complied with.
3. A settlement of this matter has \_\_\_\_\_ has not \_\_\_\_\_ been reached.
4. If settlement has been reached, \_\_\_\_\_, (Plaintiff) (Defendant), shall prepare the stipulation for settlement.
5. On an attached sheet I have briefly described the services rendered and for each service I have specified the time expended and the related charge.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mediator