

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
In re: :
Adoption of Pro Bono Mediation :
Pilot Program and Procedures :
: :
----- X

AMENDED
GENERAL ORDER # 546

WHEREAS, a program providing for pro bono mediation may avoid the need for various types of bankruptcy litigation, reduce costs to debtors and other parties, and allow for the more efficient use of judicial resources; and

WHEREAS, a program providing for the availability of a mediation advocate serving on a pro bono basis may similarly avoid the need for various types of bankruptcy litigation, reduce costs to debtors and other parties, and allow for the more efficient use of judicial resources; and

WHEREAS, the program has been in effect on a pilot basis since February 3, 2010;

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Pro Bono Mediation Program Procedures annexed to this General Order and the Pro Bono Mediation Program described therein are adopted, pursuant to 11 U.S.C. § 105(a); and it is further

ORDERED, that effective immediately, the Pro Bono Mediation Program Procedures shall apply in all cases and proceedings in this court; and it is further

ORDERED, that the Pro Bono Mediation Program Procedures and forms for requesting pro bono mediation and/or a mediation advocate are attached hereto, and shall be available in the Clerk's Office and on the Court's website; and it is further

ORDERED, the Pro Bono Mediation Program Procedures shall be in addition to the procedures for mediation set forth in Rule 9019-1 of the Local Rules of this Court, and that nothing in this General Order shall be deemed to restrict the rights of litigants to request mediation or the authority of the Court to direct mediation in accordance with that rule.

Dated: Brooklyn, New York
December 14, 2010

/s/Carla E. Craig
Carla E. Craig
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re: : GENERAL ORDER # 546

Adoption of Pro Bono Mediation :
Pilot Program and Procedures :
: :
-----X

WHEREAS, a program providing for pro bono mediation may avoid the need for various types of bankruptcy litigation, reduce costs to debtors and other parties, and allow for the more efficient use of judicial resources; and

WHEREAS, a program providing for the availability of a mediation advocate serving on a pro bono basis may similarly avoid the need for various types of bankruptcy litigation, reduce costs to debtors and other parties, and allow for the more efficient use of judicial resources; and

WHEREAS, the implementation of such a program on a pilot basis is appropriate;

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Pro Bono Mediation Program Procedures annexed to this General Order and the Pro Bono Mediation Program described therein are adopted, pursuant to 11 U.S.C. § 105(a); and it is further

ORDERED, that effective immediately, the Pro Bono Mediation Program Procedures shall apply in all cases assigned to Judge Alan S. Trust, and any other Judge of this Court who may elect to participate in the Pro Bono Mediation Program; and it is further

ORDERED, that the Pro Bono Mediation Program Procedures and forms for requesting pro bono mediation and/or a mediation advocate are attached hereto, and shall be available in the Clerk's Office and on the Court's website; and it is further

ORDERED that the pilot program shall take effect upon entry of this Order, and shall continue in effect through and including December 31, 2010; provided that the Court may extend the term of this pilot program and/or modify this Order and/or modify the Pro Bono Mediation Program Procedures and forms, and in that event, shall make the revised Procedures and forms available in the Clerk's Office and on the Court's website immediately; and it is further

ORDERED, the Pro Bono Mediation Program Procedures shall be in addition to the procedures for mediation set forth in Rule 9019-1 of the Local Rules of this Court, and that nothing in this General Order shall be deemed to restrict the rights of litigants to request mediation or the authority of the Court to direct mediation in accordance with that rule.

Dated: Brooklyn, New York
February 3, 2010

/s/Carla E. Craig
Carla E. Craig
Chief United States Bankruptcy Judge

PRO BONO MEDIATION PROGRAM PROCEDURES

How to Apply:

for Pro Bono Mediation: the Applicant will file and serve an application for pro bono mediation, along with a statement of financial need. If the Court grants the Application, the Court will enter an Order and appoint a pro bono mediator. The parties will then execute a mediation agreement with that mediator and attempt to resolve the dispute via mediation. The forms relating to this process are attached, and can be accessed through the Court's website, <http://www.nyeb.uscourts.gov/search/mediation.php>.

for Appointment of a Mediation Advocate: The Applicant will file an application for appointment of a mediation advocate along with the statement of financial need, and, if justified, the Court will appoint a *pro bono* Mediation Advocate. The applicant and the Mediation Advocate will execute a limited retainer agreement. The forms relating to this process are also attached, and can also be accessed through the Court's website, <http://www.nyeb.uscourts.gov/search/mediation.php>.

How to Object:

A form of objection to referral of a matter to pro bono mediation is attached, and can also be accessed through the Court's website, <http://www.nyeb.uscourts.gov/search/mediation.php>. Any party will have fourteen (14) days from the filing of an application for use of this process within which to file an objection to pro bono mediation.

Why Mediate?

Many times, an independent third party can objectively hear both sides to a dispute and assist the parties in resolving the dispute without the costs and uncertainty of continued litigation, or propose alternatives that may not have been considered by the parties to the dispute. Mediation is confidential: the mediator is privy to the strengths and weaknesses of both sides, but does not divulge to the other side any information without the first party's consent. The Mediator is also not the decision-maker on the facts and law of the dispute. While a mediator may share her views of the success of a position to a party if asked, the mediator does not act as a judge in any way.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In Re:

Debtor.

-----X

,

Plaintiff,

-against-

Defendant.

-----X

Chapter ____

Case No.: _____

Adv. Pro No.: _____

APPLICATION FOR PRO BONO MEDIATION

TO THE HONORABLE [Insert Judge's Name], U.S. BANKRUPTCY JUDGE:

1. Name of Applicant: _____ (“Applicant”).

2. I am a party to and/or have appeared in the above referenced bankruptcy case and/or adversary proceeding which involves a “Contested Matter” described as follows: (Briefly describe the nature of the dispute in which you are presently involved in the space below, and include whether you are plaintiff, defendant, movant or respondent.)

3. Applicant does not have an attorney to represent his/her interests in the Contested Matter and is acting “pro se” in that matter.

4. Applicant asserts that he/she does not have the financial ability to pay a Mediator for mediation services and/or retain a lawyer to represent his/her interests in the Contested Matter.

5. Applicant desires to have the Contested Matter described above referred to Mediation through the Court’s Pro Bono Mediation Program where the court will appoint a Mediator and if desired, appoint a Mediator Advocate for Applicant.
6. Applicant has attached to this Motion as **Exhibit “A”** a completed **Affidavit of Financial Need** which will be reviewed by the Bankruptcy Court in determining whether I am eligible for the Pro Bono Mediation Program. If I have requested a pro bono Mediator Advocate, I have also attached as **“Exhibit B”** an **Affidavit in Support of Request for Mediator Advocate**.
7. Applicant acknowledges that in the event that Applicant’s Application is approved by the Bankruptcy Court for Pro Bono Mediation, that Applicant will be required to enter into a pro bono retainer agreements with the assigned Mediator and/or Mediator Advocate and be shall be bound by the Rules and Regulations of the Pro Bono Mediation Program.
8. Applicant hereby certifies that a true and correct copy of this Application and all attachments will be mailed within two (2) days to the following:

[Note: this form and any attachments must be served on all parties involved with the Contested Matter, and any case trustee]

WHEREFORE, Applicant respectfully requests:

[Check all that Apply]

- 1. That the Contested Matter be referred to a Pro Bono Mediator.

- 2. That a Mediator Advocate be assigned to represent Applicant for the Mediation.

Dated: [Insert Town, _____, New York]
[Insert Date _____, 20__]

[Sign Above]

[Print Name]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter ____

,

Case No. _____

Debtor.

-----X

,

Adv. Pro. No. _____

Plaintiff,

-against-

,

Defendant.

-----X

**DECLARATION OF FINANCIAL NEED IN SUPPORT OF
APPLICATION FOR PRO BONO MEDIATION**

1. Name of Applicant: _____

2. Current Monthly Income:

Wages, Salary, Tips, Commission, Overtime, Bonus: \$ _____

Rental/ Real Property Income: \$ _____

Interest, Dividends, Royalties: \$ _____

Pension/ Retirement Income: \$ _____

Unemployment Compensation: \$ _____

Other (Describe: _____): \$ _____

**Total Current
Monthly Income:** \$ _____

3. Current Monthly Expenses:

Rent/ Mortgage Payments: \$ _____

Automobile Installments: \$ _____

Food/housekeeping/personal care and miscellaneous: \$ _____

Utilities (e.g. electric, gas, water, phone) \$ _____

Other Monthly Expenses
(Describe: _____): \$ _____

Total Monthly Expenses \$ _____

4. Current Assets Not Subject to a Lien:

I own the following assets that have no lien against them:

Asset: _____ Value: \$ _____

5. If you are a debtor in a pending bankruptcy case, are any of the numbers above different from the financial information you have provided to the Bankruptcy Court?
Yes ___ No ___

If Yes, explain why: _____

6. If your Monthly Expenses are less than your Monthly Income above, or if you could not complete sections 1 and 2, explain why you are requesting pro bono mediation:

I declare under penalty of perjury that the information provided in this statement is true and correct to the best of my knowledge, information and belief.

Dated: _____

Signature: _____

(Print Name): _____

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter ____

,
Debtor.

Case No. _____

-----X

,
Plaintiff,
-against-

Adv. Pro. No. _____

,
Defendant.

-----X

**DECLARATION IN SUPPORT OF APPLICATION
FOR MEDIATION ADVOCATE**

1. Name of Applicant: _____.

2. I am the _____ in the above-referenced contested matter or adversary proceeding. I am not represented by counsel in this contested matter or adversary proceeding. I hereby request appointment of a *pro bono* mediation advocate on my behalf, for the limited purpose of representing me and assisting me in connection with mediation of the above-referenced adversary proceeding, and for no other purpose. I fully understand that the mediation advocate will only be representing me in connection with the court-ordered mediation of the above referenced contested matter or adversary proceeding and that the retention will immediately end upon conclusion of the mediation or by Order of the Court relieving the mediation advocate.

3. Because of my financial condition, I am unable to pay the fees and expenses that an attorney would charge to represent me at this Mediation.

4. I understand that the Court may authorize and direct payment of reasonable fees and expenses by me to the Mediation Advocate if my financial condition should change or if I have made any false statements concerning my financial condition.

5. I declare under penalties of perjury that the foregoing information is true and correct to the best of my knowledge, information and belief. I understand that I will be subject to penalties for perjury if I have made any false statements concerning my financial condition or otherwise.

Dated: _____

Signature of Applicant

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In Re:

Chapter ____

Case No.: _____

,

Debtor.

-----X

,

Plaintiff,

Adv. Pro No.: _____

-against-

,

Defendant.

-----X

**OPPOSITION TO ASSIGNMENT OF
CONTESTED MATTER TO PRO BONO MEDIATION**

1. [Insert Name of Respondent- _____] (“Respondent”), is in receipt of an Application for Assignment of Contested Matter for Pro Bono Mediation by [Insert Movant’s Name- _____] dated [Insert Date of the Application- _____]
2. Respondent opposes the assignment of the Contested Matter to Pro Bono Mediation for the following reasons [Insert reasons below]

WHEREFORE, Respondent submits that the Contested Matter should not be assigned to Pro Bono Mediation.

Dated: [Insert Town, _____ New York]
[Insert Date, _____ , 20__]

[Sign Above and Print Name of Applicant Below]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

, Chapter ____
Case No.: _____
Debtor.

-----X

, Plaintiff, Adv. Pro No.: _____
-against-

, Defendant.
-----X

PRO BONO MEDIATION REFERRAL ORDER

WHEREAS, the U.S. Bankruptcy Court for the Eastern District of New York (the “Court”) has instituted a Pilot Pro Bono Mediation Project (the “Project”); and

WHEREAS, pending before this Court is the above referenced contested matter or adversary proceeding (the “Matter”); and

WHEREAS, this Court has determined that the Matter should be referred to Mediation In accordance with the Project;

NOW, THEREFORE, it is hereby

ORDERED, that the Matter is referred to mediation pursuant to Rule 9019-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of New York, and that _____ (the “Mediation

Parties”) are all each Ordered to attend the Mediation and participate therein; and it is further

ORDERED, that _____ is appointed as Mediator; and it is further

ORDERED, that the Mediator shall set a time schedule and a fee schedule for the mediation, equally dividing the fee between the Mediation Parties, except that no fee shall be charged to any of the following Mediation Parties: _____; and it is further

ORDERED, that an individual with final authority to settle the Matter and to bind each of the Parties shall attend the mediation on behalf of each party; and it is further

ORDERED, that upon conclusion of the mediation directed herein, the Mediation Parties shall notify the Court as to the results of the mediation; and it is further

ORDERED, that in the event that the Matter is not resolved through mediation or otherwise, the Mediation Parties are directed to appear at a status conference on _____, at _____m., before the Honorable Alan S. Trust, in Courtroom 960, Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722, for a status conference on the Matter; and it is further

ORDERED, that the Mediation shall be considered a settlement negotiation for the purpose of all federal and state rules protecting disclosures made during such conferences from later discovery or use in evidence; the entire procedure shall be confidential, and no stenographic or other record shall be made except to memorialize a settlement record, all communications and conduct, oral or written, during the Mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged; such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from

discovery or admission in evidence simply as a result of it having been used in connection with this Mediation process; and it is further

ORDERED, that the Mediator and his or her agents shall have the same immunity as judges and court employees have under Federal law and the common law from liability for any act or omission in connection with the Mediation, and from compulsory process to testify or produce documents in connection with the Mediation; and it is further

ORDERED, that the Mediation shall otherwise be conducted in accordance with and shall be governed by E.D.N.Y. LBR 9019-1.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

,

Chapter ____

Case No.: _____

Debtor.

-----X

,

Plaintiff,

Adv. Pro No.: _____

-against-

,

Defendant.

-----X

ORDER APPOINTING MEDIATION ADVOCATE

WHEREAS, the U.S. Bankruptcy Court for the Eastern District of New York (the “Court”) has instituted a Pilot Pro Bono Mediation Project (the “Project”); and

WHEREAS, where appropriate, the Project intends to make available pro bono representation of parties by “mediation advocates” for the limited purpose of providing Court-annexed mediation to unrepresented, low-income litigants who qualify under the Project’s guidelines in order to promote fairness and effectiveness of the mediation process; and

WHEREAS, in order to participate in this project, any counsel serving as a “mediation advocate” will need to be able to enter limited appearances, not expressly recognized in the Federal Rules of Civil Procedure or Federal Rules of Bankruptcy Procedure, but authorized by this Court’s inherent power to regulate proceedings before it, which appointment will automatically expire at the conclusion of the mediation; and

WHEREAS, the Court has concluded that the above-referenced matter be referred to the Project; and

WHEREAS, the Court has concluded that the appointment of a “mediation advocate” on behalf of _____ will help promote the fairness and effectiveness of the mediation; and

WHEREAS, _____, Esq., has consented to serve as “mediation advocate” on behalf of _____.

NOW, THEREFORE, it is by the Court,

ORDERED, _____ is hereby authorized to file a limited appearance titled, “Limited Appearance for the Purpose of Mediation” (suggested form attached to this Order), with the understanding that such appearance will automatically expire at the conclusion of the mediation, without necessity of filing a motion to withdraw; and it is further

ORDERED, that, within ten (10) days after entry hereof, the mediation advocate designated herein shall file a letter with this Court advising the Court of any reason known to him/her why he/she cannot serve as mediation advocate, including any conflict of interest¹; and it is further

ORDERED, nothing in this order shall preclude counsel appearing under its provisions from subsequently entering a general appearance for the duration of the litigation; and it is further,

ORDERED, that this Order shall remain in effect until further Order of the Court.

¹ In the event a conflict of interest exists, the mediation advocate need only represent that a conflict exists, but need not divulge of the names or identities of the client(s) whose representation causes the conflict to exist.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x

In re:

Chapter
Case No:

,

Debtor.

-----x

Adv Pro No:

Plaintiff,

- against -

Defendant.

-----x

AGREEMENT TO MEDIATE

The parties named below having a dispute in the above adversary proceeding / contested matter (the "Contested Matter") agree to utilize the mediation services of _____ to facilitate a settlement of the disputes between them, and acknowledge and accept the following terms and conditions:

1. The parties consent to the appointment of _____ to act as mediator in the Contested Matter (the "Mediator"), as provided by the Order dated _____, a copy of which is annexed hereto as Exhibit A (the "Appointment Order"). The parties further acknowledge that the mediation shall be conducted under the terms and conditions of Local Bankruptcy Rule 9019-1 of the Eastern District of New York.

2. The parties acknowledge that the Mediator shall act as an advocate for resolution and shall use his/her best good faith efforts to assist the parties in reaching a mutually acceptable resolution. Each of the parties agrees to abide by this agreement and commits to participate in the mediation process in good faith with the intention of resolving the disputes among them.

3. The Mediator is a Registered Mediator with the United States Bankruptcy Court for the Eastern District of New York, and is a member of the firm of _____ where

he/she specializes in the representation of parties addressing financial difficulties, whether as debtors, creditors, trustees, or otherwise. Annexed hereto as Exhibit B is the affidavit of _____ regarding his conclusion that he is a disinterested person in accordance with the requirements of Local Bankruptcy Rule 9019-1 of the Eastern District of New York and the Bankruptcy Code (the "Affidavit"). Each of the parties has read the Affidavit, acknowledges that the Mediator may from time to time have cases before this Court, including cases in which the Mediator serves as an attorney for parties who seek compensation from the Bankruptcy Court. The parties accept the conclusion that the Mediator is disinterested and will maintain impartiality toward all parties. Until termination of the mediation, the Mediator will have responsibility and authority over the mediation process as and to the extent set forth in the Appointment Order and Local Bankruptcy Rule 9019-1 of the Eastern District of New York.

4. Mediation is a voluntary process for settlement negotiations. In this context, the Mediator acts as an impartial third party exclusively and does not represent any of the parties, and does not otherwise practice law. The Mediator will not give legal advice. The Mediator does not have authority to decide any issue which is the subject of the dispute among the participants. Likewise, the Mediator is not a judge. The Mediator does not have the power or authority to force a settlement on the parties. Participants are encouraged to consult with their own attorneys regarding their legal rights and responsibilities. The parties are responsible for negotiating a resolution of this case that is satisfactory and/or acceptable to them. There is no assurance that resolution will result from the mediation process or that a settled resolution is in the best interest of any or all parties.

5. All statements, written or oral, that are initially made during or created or first disclosed as a part of the mediation process are deemed to be inadmissible for any purpose in this case as well as any other proceeding and not available through discovery or other court process

directed at the mediator or otherwise seeking materials prepared for or as a part of the mediation process. The parties will not subpoena or otherwise require the Mediator to testify or produce records, reports, notes, or other documents reviewed, received, or prepared by the Mediator during the course of the mediation process.

6. Additionally, the Mediator may hold a private meeting or “caucus” with one participant. Information revealed in a private meeting is confidential and will not be disclosed by the Mediator unless the participant authorizes disclosure.

7. Unless otherwise agreed or as Ordered by the Court, the parties to the mediation (with the exception of _____) shall be responsible equally for the fees and expenses of the Mediator (the “Responsible Parties”). The Mediator shall be compensated based on actual time expended, at an hourly rate of \$_____ to be shared equally between the parties subject to the limitations in the Appointment Order. In addition to the foregoing fees, the Responsible Parties shall be responsible equally for the out-of-pocket expenses and disbursements incurred by the mediator.

The Responsible Parties further agree to each provide the mediator with an initial payment of \$_____ on account to secure payment of the first \$_____ of the mediator’s fees and expenses. In the event the mediator’s fees and expenses exceed \$_____, the Responsible Parties shall provide additional \$_____ retainers. These advances shall be applied against the mediator’s fees and expenses incurred and any amount not so applied shall be returned to the parties.

8. To the extent an order of this Court is required to approve any payments to the Mediator, the Mediator will make appropriate application therefore, and will be entitled to compensation for the additional time incurred from the Responsible Parties.

9. Each of the parties hereto recognizes that there is no adequate remedy at law for breach of this agreement and agrees to submit to the jurisdiction of this Court to provide for the specific performance of this agreement. In executing this agreement, each of the parties hereto agree to accept and abide by the terms and conditions of Local Bankruptcy Rule 9019-1 of the Eastern District of New York and the rules of mediation set forth on Exhibit C annexed hereto, which are expressly adopted and incorporated by reference.

10. This agreement may be executed in counterparts.

Dated: _____, New York

Mediator

_____, 20__

By: _____
Attorney for

_____, 20__

By: _____
Attorneys for

_____, 20__

By: _____

Agreement to Mediate in the Matter
of

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7
Case No:

Debtor.

-----X

Adv Pro No:

Plaintiff,

- against -

Defendant.

-----X

AFFIDAVIT AND DISCLOSURE
STATEMENT OF MEDIATOR

STATE OF NEW YORK)
 : ss.:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

1. I am an attorney admitted to practice law before this Court and a member of the firm of _____. (“_____”). _____ is a law firm with its office at _____. Unless otherwise stated, I have personal knowledge of the facts hereinafter set forth.

2. Neither I, _____, nor any member or associate of _____, insofar as I have been able to ascertain, has any connection with the above-captioned debtor (the “Debtor”), the creditors, or any other party in interest herein or their attorneys and accountants, except as set forth in this affidavit.

3. _____, and members and associates of _____ may have in the past represented, currently represent, and may in the future represent, entities which are claimants of the Debtor in matters totally unrelated to the pending case. _____ has a large and diversified legal practice which encompasses the representation of financial

institutions and commercial corporations, some of which may be claimants in the pending case or otherwise have an interest in such pending case. As part of its practice, _____ may appear in cases, proceedings, and transactions involving many different attorneys and accountants, some of which may represent claimants and parties in interest in this case. _____ does not represent any such entity in connection with the pending case or have any relationship with any such entity, attorneys, or accountants which would be adverse to the Debtor or its estate.

4. _____ current customary hourly rates, subject to change from time to time, are \$_____ (first year associate) to \$_____ (for the most senior members of the firm) for its attorneys' time and \$___ to \$___ for paralegal and law clerks' time. My customary hourly rate for mediations is currently \$___. Hourly rates are subject to future change based upon changes in the compensation paid to _____ personnel. It is anticipated that the undersigned will render, virtually all time in connection with this matter, subject to the possible assistance of a paralegal, whose rate is \$___ per hour.

5. Except as set forth herein, and based upon the information available to me, neither I, _____, nor any member or associate thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or his estate in the matters upon which _____ is to be employed. Accordingly, I believe _____ is a "disinterested person", as defined in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b).

6. No promises have been received by _____ or any member or associate thereof as to payment or compensation in connection with this case other than in accordance with the Agreement to Mediate. _____ has no agreement with any other entity to share with such entity any compensation received by _____ or by such entity.

7. As provided in the Agreement to Mediate, _____ expects to invoice the parties to the mediation for professional services rendered in connection with this case and for reimbursement of expenses incurred.

Sworn to before me this _____
day of _____, 20__.

Notary Public

EXHIBIT D

RULES OF MEDIATION

Ground Rules. A) Participate 100%, B) Comment Constructively and Specifically, C) One Speaker at a Time, D) Mutual Respect, E) Attack the Problem, Not the Person, F) Explore All Options Fully and Specifically, G) Keep an Open Mind.

Authority of Representatives. PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT.

Time and Place of Mediation. The Mediator shall fix the time, duration, and location of each mediation session.

Privacy. Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the participants and with the consent of the Mediator.

Confidentiality. All statements made during the entire mediation process (including pre and post mediation session communications) are deemed to be confidential, privileged, and inadmissible for any purpose in any proceeding. The mediation process begins as soon as the mediator is contacted by any of the participants and ends when the mediator considers the process complete. Confidential information disclosed to the mediator by the parties or by anyone during the course of the mediation process shall not be divulged by the mediator unless the participants authorize disclosure or disclosure is authorized by law (e.g., child abuse reporting statute, future crimes involving physical harm, professional disciplinary rules). The mediator shall not be compelled to divulge any documents/records or to testify in regard to the mediation process in a proceeding or forum. The parties shall not subpoena or otherwise require the mediator to testify or produce documents received, reviewed or prepared by the mediator during the course of the mediation process.

No Stenographic Record. There shall be no stenographic record of the mediation process and no person shall tape, record any portion of a mediation session. The mediator and the participants shall be allowed to take personal notes during the mediation session.

No Service of Process at or Near the Mediation Session. No subpoenas, summons, complaint, citations, petitions, writs, or other process may be served at or near the site of any mediation session upon any person entering, attending, or leaving the session.

Termination of Mediation. The mediation shall be terminated: a) by declaration of the mediator or b) upon application of one party that has determined that it no longer wishes to participate.

Interpretation and Application of Rules. The Mediator shall have sole authority to interpret and apply the Agreement to Mediate and these mediation rules.

[Letterhead of Mediation Advocate]

_____, 20__

**[Pro Bono Client
Name and Address]**

Re: [Main and/or Adversary Case Names and Numbers]

Dear [Client]:

This letter will confirm our agreement with respect to professional services to be rendered by me to you on a *pro bono* basis and in the limited role of “mediation advocate” under the **[pro bono mediation project]** of the Bankruptcy Court for the Eastern District of New York (the “Court”).

Scope of Representation

My *pro bono* services under this letter will be limited to providing legal counsel for you in connection with a single-session mediation as ordered by the Court in the [describe case]. My representation of you in this matter and in such role will involve a maximum of ____ hours of services in total, with an expected allocation of such time being ____ hours in preparing for the mediation session and ____ hours travelling to and attending the mediation session. You acknowledge that this representation is completely voluntary and that either you or I can terminate the representation for any reason and at any time, subject to any ethical rules or Court orders or rules.

Should I ever agree to represent you in any other matter, that arrangement will be the subject of a separate retainer letter, the terms of which must be agreed to in writing by both you and me.

You certify that no other attorney is representing you in this matter. You further agree to provide me, as *pro bono* mediation advocate, with any information or documents which I deem useful and necessary for your representation in the mediation session.

If the foregoing accurately sets forth our understanding with respect to the terms of my representation of you in this matter on the limited basis set forth on this letter, please execute a copy of this agreement at the space provided below and return that copy to me.

Very truly yours,

By: _____

The foregoing terms and conditions
are agreed to and accepted:

Print Name: _____

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

,

Debtor.

Chapter ____

Case No.: _____

-----X

,

Plaintiff,

Adv. Pro No.: _____

-against-

,

Defendant.

-----X

LIMITED APPEARANCE FOR THE PURPOSE OF MEDIATION

THE CLERK OF THE COURT will please note that I am a pro bono attorney participating in the Court's Pilot Pro Bono Mediation Project as a "mediation advocate" and am entering a "Limited Appearance for the Purpose of Mediation" pursuant under the Court's Pilot Pro Bono Mediation Project to represent _____ as a "mediation advocate" in the above-captioned case during the mediation session ONLY. Party information shall not change, and all Court notices shall continue to be sent to _____ directly.

My appearance will automatically expire at the conclusion of the mediation, whether or not the case is resolved.

[INTENTIONALLY LEFT BLANK]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re

Case No.

Chapter ___

,

Debtor.

-----X

,

Plaintiff,

Adv. Pro. No.

-against-

,

Defendant.

-----X

SETTLEMENT AGREEMENT REACHED AT MEDIATION

The parties named below having a dispute in the above matter agree to resolve the above-captioned adversary proceeding / contested matter (the "Contested Matter") according to the following terms:

1. The terms of this agreement (the "Agreement") are as follows:

2. _____ will prepare any further documents necessary to implement this agreement on or before _____, and will file this Agreement with the Court on or before _____.

3. To the extent required, _____ will prepare and file an application seeking approval of this Agreement pursuant to any applicable Federal Rule of Bankruptcy Procedure and/or Local Bankruptcy Rule (the "Application") on or before _____.

4. On or before _____, _____ will deposit \$ _____ with counsel to _____, which sum shall be held in escrow and only released to _____ upon entry of a final order approving the Agreement.

5. In the event the Bankruptcy Court declines to approve the Agreement, the \$ _____ settlement payment shall be returned to _____, and the parties shall either (a) agree to further mediation; or (b) request the Court schedule a hearing or pre-trial conference.

6. Entry into this Agreement is not an admission by either party as to any issue of law or fact in the Contested Matter and the parties reserve all of their rights in the event the Bankruptcy Court declines to approve this Agreement.

7. This Agreement represents the entire agreement between the parties, the terms of which may only be changed in a writing executed by all parties. It is fully intended by the parties that this Agreement constitute a legally binding agreement, enforceable in accordance with its terms. This Agreement, once performed, constitutes a full satisfaction and release of all claims asserted or which could have been asserted in the Contested Matter, save and except only the following:

8. This agreement may be executed in counterparts.

ACCEPTED AND AGREED TO this _____ day of _____, 20____:

Attorney for

Attorney for

Mediation Advocate for

AGREEMENT ACKNOWLEDGED BY MEDIATOR:
