

1
2
3
4 **UNITED STATES BANKRUPTCY COURT**
5 **WESTERN DISTRICT OF WASHINGTON**

6 In re:

7 Technical Corrections to Local
8 Bankruptcy Rules 9040-1 through
9 9050-1 Governing The Honorable
10 Thomas T. Glover Mediation Program

General Order No. 2012-4

11 Effective December 1, 2011, the Court adopted Local Bankruptcy Rules 9040-1
12 through 9050-1 establishing the Honorable Thomas T. Glover Mediation Program. The
13 Court has determined that certain technical corrections are appropriate and beneficial to
14 the administration of the Program.

15 Now, therefore, it is hereby **ORDERED**:

16 1. Local Bankruptcy Rules 9040-1 through 9050-1 are modified as
17 described below and as set forth in Exhibit A attached hereto.

18 2. Local Bankruptcy Rule 9044-2 is amended to clarify that conflicts or
19 potential conflicts arising from the financial interests of the Mediator may be waived
20 upon full disclosure.

21 3. Local Bankruptcy Rule 9045-1(c) is amended to remove the 28 day
22 limitation on continuances.

23 4. Local Bankruptcy Rule 9045-1(d) is revised to provide that Mediation
24 Statements are provided only to the Mediator, absent specific agreement of the parties
25 to share the Mediation Statements. Further, the rule is revised to provide that the

1 parties and the Mediator shall agree on the topics to be included in the Mediation
2 Statements with the topics listed in the rule as optional rather than mandatory.

3 5. Local Bankruptcy Rule 9045-3 is amended to correct a typographical
4 error.

5 6. Local Bankruptcy Rule 9049-1(b) is amended to state that the document
6 filed by the Mediator is the "Certificate of Compliance" rather than the "Report of
7 Mediation Conference."

8 7. Local Bankruptcy Rule 9050-1(b) is revised to clarify that the first \$500
9 payment is a flat fee.

10 DATED: October 8, 2012

11
12 FOR THE COURT:

13 

14 _____
15 Honorable Paul B. Snyder
16 Chief Judge

16 Honorable Marc Barreca
17 Honorable Philip H. Brandt
18 Honorable Timothy W. Dore
19 Honorable Brian D. Lynch
20 Honorable Karen A. Overstreet

3
4 **RULE 9040-1. HONORABLE THOMAS T. GLOVER MEDIATION PROGRAM**

5 Local Bankruptcy Rules 9040-1 through 9050-1 govern the Honorable Thomas T. Glover Mediation Program (the "Program") in the United States Bankruptcy Court for the Western District of Washington.

6 **RULE 9040-2. PURPOSE AND SCOPE**

7 (a) **Purpose.** The court recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those
8 disputes. The procedures established by these Local Bankruptcy Rules are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of
9 litigation.

10 The court also notes that the volume of cases, contested matters and adversary proceedings filed in the Western District of Washington has placed substantial burdens upon counsel, litigants and the court, all of which
11 contribute to the delay in the resolution of disputed matters. A court authorized mediation program, in which litigants and counsel meet with a Mediator, offers an opportunity to parties to settle legal disputes promptly and less
12 expensively, to their mutual satisfaction.

13 (b) **Scope.** Local Bankruptcy Rules 9040-1 through 9050-1 apply to all matters referred to the Program. All of the other Local Bankruptcy Rules apply, except to the extent that they are inconsistent with these Local
14 Bankruptcy Rules 9040-1 through 9050-1.

15 **RULE 9040-3. CERTIFICATION**

16 Unless otherwise ordered, no later than 28 days after an answer or other response to the complaint is filed in an adversary proceeding and whenever ordered by the court in other matters, counsel and client shall sign, serve and file a Mediation Certification certifying that they have considered mediation to resolve their dispute. The
17 certification shall be filed on a form established for that purpose by the court and in conformity with the instructions approved by the court. Counsel and client shall certify that both have:

- 18
- 19 (a) Read the information sheet entitled Honorable Thomas T. Glover Mediation Program Instructions for Parties;
 - 20 (b) Discussed the available dispute resolution options provided by the court and private entities; and
 - 21 (c) Considered whether their case might benefit from mediation.

22 **RULE 9041-1. ELIGIBLE CASES**

23 Unless otherwise ordered by the judge handling the particular matter, all controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case, will be eligible for referral to the
24 Program.

1 **RULE 9042-1. PANEL OF MEDIATORS**

2 **(a) Panel Maintained by the Court.** The court shall establish and maintain a panel of qualified
3 professionals (the “Panel”) who have volunteered and have been chosen to serve as Mediators for the possible
4 resolution of matters referred to the Program. A list of Mediators will be maintained on the court’s website.

5 **(b) Two Year Term.** Mediators shall serve as members of the Panel for an initial two year term.
6 Mediators may, at their election, and subject to approval by the Executive Committee (as described in Local
7 Bankruptcy Rule 9043-2), be reappointed to additional two year terms.

8 **(c) Application Process.** Applications to serve as a member of the Panel, and for reappointment to
9 the Panel, shall be submitted to the Program Administrator by the deadlines established by the Court each year, shall
10 set forth the qualifications described below, and should conform to forms promulgated by the court.

11 **RULE 9042-2. QUALIFICATIONS OF MEDIATORS**

12 **(a) Attorneys.** In order to qualify for service as a Mediator, each attorney applicant shall certify to
13 the court that the applicant:

14 (1) Is, and has been, a member in good standing of the bar of any state or of the District of
15 Columbia for at least 5 years;

16 (2) Is a member in good standing of the federal courts for the Western District of
17 Washington;

18 (3) Has served as the principal attorney of record in a combination of at least 10 bankruptcy
19 cases or adversary proceedings from commencement to conclusion; and

20 (4) Is willing to:

21 (i) serve as a Mediator for at least a two year term of appointment;

22 (ii) undertake to evaluate, mediate, and facilitate settlement of Matters no fewer
23 than once each quarter of that term, subject only to unavailability due to conflicts, personal or
24 professional commitments, or other matters which would make such service inappropriate; and

25 (iii) participate as a Mediator in not less than two Matters per year on a pro bono
basis, as described in Local Bankruptcy Rule 9051-1(1).

 (5) Attorneys who do not have the bankruptcy experience required in Local Bankruptcy Rule
9042-2(a)(3), but who have adequate mediation training and experience to otherwise qualify for
appointment as Mediators, may submit an application for appointment provided they satisfy the
requirements of Local Bankruptcy Rule 9042-2(a)(1), (2), and (4).

(b) Non-attorney Mediators.

Each non-attorney applicant shall submit a statement of professional qualifications, experience, training
and other information demonstrating, in the applicant’s opinion, why the applicant should be appointed to the Panel.
In addition, such applicants shall also make the same certification required of attorney applicants as set forth in
Local Bankruptcy Rule 9042-2(a)(4).

1
2 **RULE 9042-3. ANNUAL SELECTION OF MEDIATORS**

3 Each year the Executive Committee will select the Panel from the applications submitted, giving due regard
4 to mediation training and experience and such matters as professional experience and location so as to make the
5 Panel appropriately representative of the public being served by the Program. Appointments will be limited to keep
6 the Panel at an appropriate size and to ensure that the Panel is comprised of individuals who have broad-based
7 experience, superior skills and qualifications from a variety of legal specialties and other professions. Accordingly,
8 during its annual review, the Executive Committee may add new mediators, replace mediators whose terms have
9 expired without renewal, and/or renew the terms of existing mediators.

10 **RULE 9042-4. GEOGRAPHIC AREAS OF SERVICE**

11 The Mediators on the Panel will indicate to the court the city or cities within the Western District of
12 Washington in which they are willing to act or serve.

13 **RULE 9042-5. TRAINING**

14 Before first serving as a Mediator on any assigned Matters, each person selected pursuant to Local
15 Bankruptcy Rule 9042-3 shall have completed requisite mediation training provided by the court or approved by the
16 Program Administrator.

17 **RULE 9043-1. ADMINISTRATION OF THE PROGRAM**

18 A staff member of the court will be appointed by the Chief Bankruptcy Judge to serve as the Program
19 Administrator. The Program Administrator will be aided by an Executive Committee, as well as other staff
20 members of the court, who will maintain and collect applications, maintain the roster of the Panel, track and compile
21 results of the Program, and handle such other administrative duties as are necessary.

22 **RULE 9043-2. THE PROGRAM EXECUTIVE COMMITTEE**

23 A committee (the "Executive Committee") of no less than three and no more than five licensed attorneys
24 shall be selected by the Chief Bankruptcy Judge to assist and advise the Program Administrator, and shall be
25 responsible for the selection and maintenance of the Panel. Each member of the Executive Committee shall be
selected to a term of at least 2 but not more than 3 years at the discretion of the Chief Bankruptcy Judge.

RULE 9044-1. ASSIGNMENT TO THE PROGRAM

(a) **By the Judge.** Participation in the Program is voluntary, except when ordered by the court. A
contested matter in a case, adversary proceeding, or other dispute (hereinafter collectively referred to as "Matter" or

1 “Matters”) may be assigned to the Program by order of the judge at a status conference or other hearing. If a Matter
2 is to be assigned to the Program by the judge, the judge will enter an order assigning the Matter to the Program. The
3 parties will normally be given the opportunity to confer and designate a mutually acceptable Mediator as well as an
4 alternate Mediator, and upon agreement, should follow the procedure set forth in subparagraph (b). If the parties
5 cannot agree, or if the judge deems selection by the Program Administrator, or its designee, to be appropriate and
6 necessary, the Program Administrator will select a Mediator. Nothing contained in these Local Bankruptcy Rules is
7 intended to preclude other forms of dispute resolution with the consent of the parties and, where required, approval
8 of the court. The court will enter an order on the Program Administrator’s selection of the Mediator.

9 **(b) By Stipulation.** Parties to a dispute may stipulate to the submission of a Matter to the Program
10 by filing a Stipulation Appointing Mediator and Assignment to the Program (“Stipulation”). If the parties have
11 already selected a Mediator who has indicated a willingness to serve, they may file the Stipulation and electronically
12 upload an order appointing the proposed Mediator. Upon entry of the Order Appointing Mediator, the party who
13 uploaded the order shall mail a copy of the order to the Mediator. If the parties have not contacted a Mediator in
14 advance, they may file the Stipulation identifying a Mediator and an alternate from the Panel and upload an order
15 appointing both the Mediator and alternate. Upon entry of the Order Appointing Mediator, the party who uploaded
16 the order shall mail a copy of the order to the Mediator and the alternate. Assignment to the Program shall not alter
17 or affect any time limits, deadlines, scheduling matters or orders in any adversary proceeding, contested matter or
18 other proceeding, unless specifically ordered by the court.

19 **RULE 9044-2. SERVICE OF MEDIATOR**

20 No Mediator may serve in any Matter in violation of the standards set forth in 28 U.S.C. § 455, except that
21 parties represented by an attorney may waive a conflict arising under 28 U.S.C. § 455(b)(4) after full disclosure of
22 the conflict by the Mediator. An attorney Mediator shall also promptly determine all conflicts or potential conflicts
23 in the same manner as an attorney would under the Washington Rules of Professional Conduct if any party to the
24 dispute were a client. A non-attorney Mediator shall promptly determine all conflicts or potential conflicts in the
25 same manner as under the applicable rules pertaining to the Mediator’s profession. If the Mediator’s firm has
represented one or more of the parties, the Mediator shall promptly disclose that circumstance to all parties in
writing. A party who believes that the assigned Mediator has a conflict of interest shall promptly bring the matter to
the attention of the Mediator. If the Mediator does not withdraw from the assignment, the matter shall be brought to
the attention of the court by the Mediator or any of the parties.

26 **RULE 9045-1. DISPUTE RESOLUTION PROCEDURES**

27 **(a) Availability of Mediator.** Promptly after appointment, a Mediator not available to serve in the
28 Matter shall notify the parties, the alternate Mediator, and the Program Administrator of that unavailability. The
29 alternate Mediator shall thereafter serve as the Mediator.

30 **(b) Initial Telephonic Conference.** As soon as practicable after notification of appointment, the
31 Mediator shall conduct a telephonic conference with pro se parties and/or counsel for the parties to provide
32 preliminary information to the Mediator concerning the nature of the Matter, the expectations of the parties, and
33 anything else which will facilitate the process (the “Initial Conference”).

1 **(c) Mediation Conference Scheduling.** Within 7 days of the Initial Conference, the Mediator shall
2 give notice to the parties of the time and place for the mediation conference (the “Mediation Conference”), which
3 shall commence not later than 28 days following the date of appointment of the Mediator, and which shall be held in
4 a suitable neutral setting, such as the office of the Mediator, at a location convenient to the parties. Upon written
5 stipulation between the Mediator and the parties, the Mediation Conference may be continued ~~for a period not to~~
6 ~~exceed an additional 28 days.~~

7 **(d) Mediation Statements.** Unless modified by the Mediator, no later than 14 days after the date of
8 the order assigning the Matter to the Program, each party shall submit to the Mediator a written mediation statement
9 (“Mediation Statement”) directly to the Mediator, and shall serve on all other parties, a written mediation statement
10 (“Mediation Statement”). Mediation Statements may be shared with other parties if agreed upon at the Initial
11 Conference. Such statements shall not exceed 10 pages (exclusive of exhibits and attachments). At the Initial
12 Conference the parties and the Mediator shall determine the topics to be addressed in the Mediation
13 Statements. While such statements may include any information that would be useful, they must Suggested topics
14 include:

- 15 (1) Identify the person(s), in addition to counsel, who will attend the session as
16 representative of the party with decision making authority;
- 17 (2) Describe briefly the substance of the dispute;
- 18 (3) Address whether there are legal or factual issues whose early resolution might
19 appreciably reduce the scope of the dispute or contribute significantly to settlement;
- 20 (4) Identify the discovery that could contribute most to equipping the parties for meaningful
21 discussions;
- 22 (5) Set forth the history of past settlement discussions, including all prior and presently
23 outstanding offers and demands;
- 24 (6) Make an estimate of the cost and time to be expended for further discovery, pretrial
25 motions, expert witnesses and trial;
- (7) Indicate presently scheduled key dates related to the dispute, including discovery
 deadlines, status conferences, pretrial conferences, and trial; and
- (8) Provide the terms of an acceptable settlement that would conclude the matter and end
 further litigation expenses.

(e) Statements Not To Be Filed. The Mediation Statements shall not be filed with the court and the
court shall not have access to them.

(f) Identification of Participants. Parties may identify in the Mediation Statements any persons
connected to a party opponent (including a representative of a party opponent’s insurance carrier) whose presence at
the Mediation Conference would improve substantially the prospects for making the session productive; the fact that
a person has been so identified, shall not, by itself, result in an order compelling that person to attend the Mediation
Conference.

(g) Documents. Parties shall attach to their Mediation Statements copies of documents out of which
the dispute has arisen, e.g., contracts, or those whose availability would materially advance the purposes of the
Mediation Conference.

1 **RULE 9045-2. ATTENDANCE AT MEDIATION CONFERENCE**

2 **(a) Counsel.** Counsel for each party who is primarily responsible for the Matter shall personally
3 attend the Mediation Conference and any adjourned sessions of that Mediation Conference. Counsel for each party
4 shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to
5 settlement, in detail and in good faith.

6 **(b) Parties.** All individual parties, and representatives with authority to negotiate and to settle the
7 Matter on behalf of parties other than individuals, shall personally attend the Mediation Conference unless excused
8 by the Mediator for cause.

9 **RULE 9045-3. FAILURE TO ATTEND THE MEDIATION CONFERENCE**

10 If any party willfully fails to attend the Mediation Conference or willfully violates Local Bankruptcy Rules
11 9040-1 through 9050-1, the Mediator shall report such violation to the court by filing a statement regarding the
12 violation. Any ~~shall such~~ violation may result in the imposition of sanctions by the court.

13 **RULE 9046-1. CONDUCT OF THE MEDIATION CONFERENCE**

14 The Mediation Conference shall proceed informally. Rules of evidence shall not apply. There shall be no
15 formal examination or cross-examination of witnesses. Where necessary, the Mediator may conduct continued
16 Mediation Conferences after the initial session. As appropriate, the Mediator may:

- 17 **(a)** Permit each party, through counsel or otherwise, to make an oral presentation of its position;
- 18 **(b)** Help the parties identify areas of agreement and, where feasible, formulate stipulations;
- 19 **(c)** Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain
20 as carefully as possible the reasoning of the Mediator that supports these assessments;
- 21 **(d)** Assist the parties in settling the dispute;
- 22 **(e)** Estimate, where feasible, the likelihood of liability and the dollar range of damages;
- 23 **(f)** Help the parties devise a plan for sharing the important information and/or conducting the key
24 discovery that will equip them as expeditiously as possible to participate in meaningful settlement discussions or to
25 posture the case for disposition by other means; and
- (g)** Determine whether some form of follow-up to the conference would contribute to the case
development process or to settlement.

RULE 9047-1. CONFIDENTIALITY

(a) Written and Oral Communications. All written and oral communications made in connection
with or during any Mediation Conference, including the Mediation Statement referred to in Local Bankruptcy Rule
9045-1(d), shall be subject to all the protections afforded by Fed. R. Evid. 408 and by Fed. R. Bankr. P. 7068. The

1 Mediator may ask the parties to sign a confidentiality agreement. Any confidentiality agreement shall be retained by
2 the Mediator and not filed with the court.

3 **(b) Limitations on Disclosure.** No written or oral communication made by any party, attorney,
4 Mediator or other participant in connection with or during any Mediation Conference may be disclosed to anyone
5 not involved in the Matter. Nor may such communication be used in any pending or future proceeding in court to
6 prove liability for or invalidity of a claim or its amount. Such communication may be disclosed, however, if all
7 participants in the Program, including the Mediator, so agree. Notwithstanding the foregoing, this Local Bankruptcy
8 Rule 9047-1 does not require the exclusion of any evidence:

9 (1) Otherwise discoverable merely because it is presented in the course of a Mediation
10 Conference; or

11 (2) Offered for another purpose, such as proving bias or prejudice of a witness, negating a
12 contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

13 **(c) Evaluations and Written Agreements.** Nothing in this Local Bankruptcy Rule 9047-1 shall be
14 construed to prevent parties, counsel or Mediators from responding in absolute confidentiality, to inquiries or
15 surveys by persons authorized by this court to evaluate the Program. Nor shall anything in this section be construed
16 to prohibit parties from entering into written agreements resolving some or all of the Matter or entering or filing
17 procedural or factual stipulations based on suggestions or agreements made in connection with a Mediation
18 Conference.

19 **RULE 9048-1. SUGGESTIONS AND RECOMMENDATIONS OF MEDIATOR**

20 If the Mediator makes any oral or written suggestions to a party's attorney as to the advisability of a change
21 in that party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion
22 to the party. The Mediator shall have no obligation to make any written comments or recommendations, but may, as
23 a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any
24 such memorandum shall be filed with the clerk of court or made available in whole or in part, directly or indirectly,
25 to the court.

26 **RULE 9049-1. PROCEDURES UPON COMPLETION OF MEDIATION CONFERENCE**

27 Upon the conclusion of the Mediation Conference, the following procedure shall be followed:

28 **(a) Agreement Reached.** If the parties have reached an agreement regarding the disposition of the
29 Matter, the parties shall determine who shall prepare the writing to dispose of the Matter, and they may continue the
30 Mediation Conference to a date convenient to all parties and the Mediator if necessary. The court will reasonably
31 accommodate parties who desire to place any resolution of a Matter on the record during or following the Mediation
32 Conference. Where required, the parties shall promptly submit the fully executed stipulation to the court for
33 approval.

34 **(b) Certificate of Compliance.** Within 14 days of the conclusion of the Mediation Conference, the
35 Mediator shall file with the court a [Report of Mediation Conference-Certificate of Compliance](#) in the form provided
36 by the court. Regardless of the outcome of the Mediation Conference, the Mediator will not provide the court with
37 any details of the substance of the Mediation Conference.

38 **(c) Report ~~to Program Administrator of Mediation Conference.~~** In order to assist the Program
39 Administrator in compiling useful data to evaluate the Program, and to aid the Executive Committee in assessing the
40 efforts of the members of the Panel, the Mediator shall provide the Program Administrator with [a Report of
41 Mediation Conference that includes statistical information, including](#) an estimate of the number of hours spent in the

1 Mediation Conference, the amount charged by the Mediator, an attendance form showing the participants in the
2 mediation, and any other statistical and evaluative information as required by the court.

3
4 **RULE 9050-1. PRO BONO MATTERS AND FEES FOR SERVICES OF MEDIATORS**

5 **(a) Pro Bono Matters.** During each year of every two-year term, each Mediator shall undertake not
6 less than two mediations where a party, whether represented by counsel or not, is permitted to participate without
7 charge (“Pro Bono Matters”). The Mediator shall have discretion to determine whether a particular party is entitled
8 to participate in a Matter without charge because of their financial circumstances. Other parties participating in a
9 Pro Bono Matter who have the ability to pay the fee and who are not, in the discretion of the Mediator entitled to
10 participate without charge, shall pay the fee described in subsection (b) below. After rendering 6 hours of Program
11 related services as provided in subsection (b) below, and subject to the consent of the parties, the Mediator may
12 continue to provide additional services at the hourly rate described in subsection (b) below only if the party
13 participating without charge agrees to pay an equal share of the additional fees or the Mediator agrees to continue
14 the Mediation without charge to such pro bono party and the other parties sharing the Mediator's additional fees are
15 not charged for the pro bono participant's share. Each Mediation in which at least one party participates without
16 charge shall count towards the satisfaction of the Mediator’s annual requirement to conduct not less than two Pro
17 Bono Matters.

18 **(b) Other Matters and Fees for Mediator Services.** For all Matters other than Pro Bono Matters,
19 Mediators are authorized to charge each party to the Mediation, whether or not represented by counsel, [a flat fee of](#)
20 [\\$500. The flat fee will pay](#) for up to 6 hours of Program related services rendered, exclusive of the Initial
21 Conference, and with a minimum of 4 hours spent in the Mediation Conference. For any services rendered in excess
22 of the initial 6 hours, with the consent of the parties, a Mediator may charge the parties a rate not to exceed a total
23 of \$300 per hour for services rendered, to be split evenly among the parties, except as provided in subsection (a)
24 above.

25
[Committee Comment](#)

[See Washington Rules of Professional Conduct, Rule 1.5\(f\)\(2\) regarding flat fee arrangements.](#)