

## **B.L.R. 9039-1 Bankruptcy Judges Acting as Mediators or Settlement Judges**

### **(a) Appointment Order**

Upon motion, oral request, stipulation, or *sua sponte* decision, a judge presiding over an adversary proceeding, bankruptcy case, or contested matter may appoint another available active or recalled United States Bankruptcy Judge to act as mediator or settlement judge.

### **(b) Process for Appointment**

#### **(i) Out-of-District Judicial Mediators or Settlement Judges**

Pursuant to 28 U.S.C. § 152(a), all bankruptcy judges are appointed in a specific judicial district. This means that they can perform judicial duties – including conducting settlement conferences or mediation – only in cases venued within their home district. 28 U.S.C. § 155(a) permits a bankruptcy judge to perform judicial duties outside their home district upon the approval of the Judicial Council of the relevant circuit. The Ninth Circuit Judicial Council requires entry of an order authorizing a judge's temporary assignment to another district *prior* to the commencement of work outside the home district. Where the parties and/or the presiding judge wishes to appoint an out-of-district judge to serve as mediator or settlement judge, they must obtain an order authorizing that judge's temporary assignment to the relevant district *prior* to the issuance of the appointment order and commencement of mediation or any settlement conference.

#### **(ii) In-District Judicial Mediators or Settlement Judges/Out-of-District Judicial Mediators or Settlement Judges Following Temporary Assignment**

Where the parties or presiding judge wish to appoint an in-district judge who has confirmed their availability and willingness to serve as a judicial mediator or settlement judge, or where the parties or presiding judge have obtained an order authorizing the temporary assignment of an out-of-district judge for purposes of conducting a mediation or settlement conference, the presiding judge must issue an order appointing the chosen judge as mediator or settlement judge. The parties shall contact the chambers of the judicial mediator or settlement judge to obtain their proposed form of appointment order, and shall provide such order to the chambers of the presiding judge for entry through CM/ECF.

**(c) Judicial Immunity and Other Protections**

The service of any in- or out-of-district judge appointed as a judicial mediator or settlement judge shall constitute performance of their official duties as a federal judge. Accordingly, the settlement judge or judicial mediator, and all persons assisting them, shall enjoy unqualified judicial immunity, as well as all other privileges, immunities, and protections afforded to a United State Bankruptcy Judge and to employees of the United States Courts with respect to any matters arising from or related to their role in conducting or facilitating the settlement conference or mediation.

**(i) Waiver and Release of Claims Arising from or Relating to the Settlement or Mediation Process**

By participating in judicial mediation or a judicial settlement conference, all parties to such proceedings, along with their agents, successors, and assigns, agree to forever waive and release any claims or causes of action against the judicial mediator or settlement judge, as well as all persons assisting such judge, that arise from or relate to the settlement or mediation process.

**(ii) Waiver of Any Right to Compel Discovery from Settlement Judge or Judicial Mediator**

Except as might be required by applicable law, the parties participating in judicial mediation or a judicial settlement conference, along with their agents, successors, and assigns, agree to waive any right to compel from the settlement judge or judicial mediator, or any persons assisting such judge, any testimony (oral or written); production of materials (including, without limitation, any records, reports, summaries, notes, emails or other correspondence, communications, or other materials) made, received, or transmitted by the settlement judge or judicial mediator or any person assisting such judge with the settlement or mediation process; or other participation in any subsequent or pending litigation, arbitration, or other proceeding of any kind related to the mediation or settlement conference.

The judicial mediator or settlement judge may, in their sole discretion, require the parties to sign an agreement memorializing their acknowledgment of judicial immunity and of the waivers described above.

**(d) Disqualification**

No judge may serve as a judicial mediator or settlement judge if that judge would be disqualified under (i) 28 U.S.C. § 144 if that judge were a district court judge presiding over the matter or proceeding; or (ii) 28 U.S.C. § 455 if that judge were a justice, judge, or other judicial officer presiding over the matter or proceeding in each case unless the parties consent in writing following disclosure.

PROPOSED