



U.S. DISTRICT COURT'S LOCAL MEDIATION RULE IN BANKRUPTCY COURT: IOWA AND MINNESOTA EXAMPLES

By Donald L. Swanson

Historically, bankruptcy courts and bankruptcy professionals have been lagging adopters of mediation. They've been slow to utilize mediation for resolving bankruptcy disputes, and they've been slow to adopt local rules on mediation.

Today, however, 80 percent of all 94 bankruptcy court districts have a local mediation rule of some type¹ with more on the way, and mediation is a significant tool in many bankruptcy courts. That's because of a simple reality: bankruptcy mediation works!

Bankruptcy mediation is useful, for example, in dealing with heavy case-loads and high-emotion cases, in minimizing litigation costs and maximizing personal relationships (especially with early mediation), in providing creative

solutions to interrelated disputes and in protecting confidentiality.

Of those 80 percent, however, a dozen or so bankruptcy court districts must rely on the local mediation rules of their district courts. Three examples from the Midwest are the two Iowa Districts and the District of Minnesota.

TWO IOWA DISTRICTS

Bankruptcy courts for the Northern District and the Southern District of Iowa do not have local mediation rules of their own. But the U.S. District Courts for both the Northern and Southern Districts do. They have Local Rule 78B, which addresses mediation and includes bankruptcy cases.

Here is the mediation authorization language in subpart (a) of Rule 78B:

"Pursuant to 28 U.S.C. § 651(b), the

court authorizes the use of ADR in civil cases, *including adversary proceedings in bankruptcy*. The court's primary ADR procedure is private mediation."

Rule 78B also provides for confidentiality.

DISTRICT OF MINNESOTA

The Bankruptcy Court for the District of Minnesota has a one-sentence local mediation rule (**Rule 9019-2**) that reads:

"The court may refer any adversary proceeding or contested matter for mediation by any other federal judge or any mediator chosen by the parties."

This local bankruptcy rule does not address confidentiality or any other mediation concern. But the U.S. District Court for the District of Minnesota addresses mediation in its **Local Rule 16.5**², which authorizes mediation "in all civil actions" as follows:

"(2) Authorization. The court authorizes the use of alternative dispute resolution processes in all civil actions, *including adversary proceedings in bankruptcy*."

Local District Court Rule 16.5 also provides for mandated mediation and confidentiality.

APPLYING DISTRICT COURT'S MEDIATION RULE

The obvious question is this: "Can a district court's local mediation rule be utilized in bankruptcy court too?"

The answer is, actually, "Yes, it can." Here's how:

–For Starters...

Fed.R.Bankr.P. 9029(b)³ makes a district court's local rules available to the bankruptcy court, at the bankruptcy judge's discretion:

"A [bankruptcy] judge may regulate practice in any manner consistent with ...local rules of the district."

–Furthermore...

1. **Fed.R.Bankr.P. 9029(a)(1)**⁴ authorizes a district court to adopt local rules on matters within its bankruptcy jurisdiction:

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“Each district court...may make and amend rules governing practice and procedure in all cases and proceedings within the district court’s bankruptcy jurisdiction.”

2. **28 U.S.C. § 1334⁵** grants jurisdiction over bankruptcy cases to district courts. Sec. 1334(a)&(b) provides:

“(a) Except as provided in subsection

(b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11”; and

“(b)...notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11...or related to cases under title 11.”

3. **28 U.S.C. § 151⁶** designates bankruptcy judges and bankruptcy courts as “a unit” of the district courts:

“In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district.”

4. **28 U.S.C. § 157⁷** establishes a division of labor between district and bankruptcy courts on bankruptcy matters, including authorization for referral of bankruptcy cases to bankruptcy courts and procedural divisions between “core” and “related to” proceedings. For example:

“(a) Each district court may provide that any or all cases under title 11...or related to a case under title 11 shall be referred to the bankruptcy judges for the district”;

“(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings...and may enter appropriate orders and judgments”;

“(c)(1) A bankruptcy judge may hear a proceeding that is...related to a case under title 11...[and] shall submit proposed findings of fact and conclusions of law to the district court...[for] final order or judgment.”

MODEL LOCAL RULES

A number of years ago, the Mediation Committee of the American Bankruptcy Institute developed a resource in this area: a set of **Model Local Rules for Mediation⁸**. And, more recently, they’ve added a **Commentary⁹** thereon.

CONCLUSION

A U.S. District Court’s local mediation rule can be utilized in that district’s bankruptcy court, when the bankruptcy court does not have a local mediation rule of its own. Iowa’s Northern and Southern Districts are two examples.

A U.S. District Court’s local rule on mediation confidentiality and mandated mediation can be utilized in that district’s bankruptcy court, when the bankruptcy court’s local mediation rule is silent thereon. Minnesota’s District is an example.

And the ABI’s Model Local Rules for Mediation and Commentary are a resource for developing local mediation rules.

1. See <https://mediatbankry.com/2016/12/06/a-list-of-bankruptcy-districts-that-have-and-have-not-adopted-local-mediation-rules/>
2. See http://www.mnd.uscourts.gov/local_rules/LR-16-5.pdf
3. See https://www.law.cornell.edu/rules/frbp/rule_9029
4. *Ibid*
5. See <https://www.law.cornell.edu/uscode/text/28/1334>
6. See <https://www.law.cornell.edu/uscode/text/28/151>
7. See <https://www.law.cornell.edu/uscode/text/28/157>
8. See <http://promo.abi.org/committee/mediation/modelrules/rulescombo.pdf>
9. See <http://promo.abi.org/committee/mediation/modelrules/commentary.pdf>



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