

**PART I.**  
**GENERAL COURT PROCEDURES**  
**(GCP)**

**GCP #1 DIVISION OF BUSINESS BETWEEN ST. THOMAS AND ST. CROIX**

The United States District Court for the United States Virgin Islands Bankruptcy Division is a member of the Third Circuit. The Virgin Islands has two divisions, Division of St. Thomas/St. John and the Division of St. Croix. The St. Thomas/St. John divisional clerk's office handles bankruptcy cases for both divisions.

The Clerk of the Bankruptcy Court for the **Division of St. Thomas/St. John** is located at:  
5500 Veteran's Drive, RM 310  
Charlotte Amalie, St. Thomas 00802-6424  
Telephone: 340-774-8310  
Fax: 340-776-5615

The courthouses and judges chambers are located at:

District Court of the Virgin Islands  
St. Thomas/St. John Division  
5500 Veterans Drive, Rm 310  
St. Thomas, VI 00802

District Court of the Virgin Islands  
St. Croix Division  
3013 Estate Golden Rock, Suite 219  
St. Croix, VI 00820

**GCP #2A PAYMENT OF FILING FEES**

All fees must be paid by Check, Money Order or Cash. Certain pleadings require fees be paid by two separate checks or money orders. Please see [www.vid.uscourts.gov](http://www.vid.uscourts.gov) under Court Fees for a list of all fees that must be paid by two separate checks or money orders. All checks and money orders are to be made payable to the Clerk of the Court.

Payment is required to complete the process of filing a document electronically. If payment is not received by the close of the next business day, the court will take necessary action which may include striking the pleading from the record.

**GCP # 2B DISMISSAL FOR FAILURE TO SUBMIT LOCAL FORM NO. 1**

A bankruptcy case shall be dismissed pursuant to Local Rule 1017-2, Dismissal of Bankruptcy Case for Deficient Filing, if Local Form No. 1, the Declaration of Electronic Filing, or Local Form No. 1A, Declaration Re: Electronic Filing of Petition, Schedules, and Statements for Individual Debtor Not Represented by Counsel, is not submitted within fifteen (15) days of the date the petition is filed. At any time before the date set for entry of an order of dismissal, the debtor (1) may file a motion requesting a hearing at which debtor shall show cause why the case should not be dismissed for failure to file Local Form No. 1 or Local Form No. 1A or (2) may file a motion and proposed order seeking an extension of time.

### GCP # 3. EXCLUSION OF PERSONAL DATA IDENTIFIERS

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2003, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the Court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

A. Social Security Numbers. If an individual's Social Security number must be included in a pleading, only the last four digits of that number should be used.

B. Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

C. Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.

D. Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may:

A. file an unredacted version of the document under seal, or

B. file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

\_\_\_\_\_ The unredacted version of the document or the reference list document shall be retained by the Court as part of the record. The Court may, however, still require the party to file a redacted copy for the public file.

\_\_\_\_\_ The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading for compliance with this rule.

#### Explanatory Comment

In September 2001, the Judicial Conference of the United States adopted a policy regarding

privacy and public access to electronic case files (the privacy policy). This rule furthers the Judicial Conference's policy.

Filers should also exercise caution when filing documents that contain the following:

1. any personal identifying number, such as a driver's license number;
2. medical records, treatment and diagnosis;
3. employment history;
4. individual financial information; and
5. proprietary or trade secret information.

#### **GCP # 4 DOCUMENTS FILED ON DISK OR PAPER**

Electronic Filing is mandatory in the United States District Court for the United States Virgin Islands, Bankruptcy Division pursuant to Interim Local Rule 5005-1.

The Clerk shall accept documents filed on disk in a Portable Document Format (PDF). Submission of documents on disk or scanned in the Clerk's Office constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court. The Clerk shall make a document scanner available in the Clerk's Office. Paper documents prepared or submitted for filing by attorneys must be scanned by an attorney or his agent (the "filing attorney") at the Clerk's Office.

Documents that require original signatures must be maintained in paper form by the filing party until six (6) years after all time periods for appeals expire and all appeals have been concluded. On request of the Court or party in interest, the filing party must provide the original documents for review. Failure to maintain documents for the specified period shall subject the Filing User to sanctions including, without limitation, disgorgement of fees. This requirement also applies to any document for which statute, rule, or Court order requires an original signature.

The Clerk shall transfer documents submitted by disk or scanned by the filing attorney into the CM/ECF system and make a corresponding docket entry. The date of filing shall be the date the disk or scanned document is received by the Clerk. The official record is the electronic recording of the document as stored on the CM/ECF system. The Clerk shall discard the disk.

Exhibits and other attachments to pleadings shall not exceed ten (10) pages in length. Exhibits attached to the following pleadings are not subject to the ten-page limitation: Application for Compensation and Reimbursement, Trustee's Final Report and Account, Plan of Reorganization, and Disclosure Statement. A summary not exceeding ten (10) pages may be filed for exhibits and Attachments. In lieu of the summary or in lieu of the entire document, a one-page Document and Loan History Abstract conforming to Local Form No. 27 shall be filed. All abstracts, exhibits and exhibit summaries must be filed as separate documents. The party filing a pleading containing a summary of an exhibit or the Document and Loan History Abstract shall have a paper copy of the entire document at any hearing that is reasonably expected to pertain to

the pleading. The party filing a pleading containing a summary or abstract shall, upon request of any party in interest, provide a copy of the entire exhibits.

Filing Attorneys shall comply with the Clerk's Procedures for Scanning Documents. Bankruptcy petitions scanned at the Clerk's Office shall be accompanied by a mailing matrix on disk that complies with the Clerk's Special Requirements for Mailing Matrixes.

Documents on disks must be filed in a Portable Document Format (PDF). Documents must be filed in a format that allows the Court to perform a full text search, except that documents received by the filing party from an outside source may be scanned into a PDF format and filed as document that will not be fully text searchable. For example, a motion drafted by the filing attorney must be fully text searchable, but attachments to the motion such as mortgages, deeds, and other supporting documentation provided to the attorney by his client may be scanned.

Only matters pertaining to one bankruptcy case or adversary proceeding shall be filed on a disk. Bankruptcy petition documents on disk shall be filed on one disk as separate PDF files as follows: (A) one PDF file containing the petition together with schedules, statements, and the Attorney Fee Disclosure Statement, if any; (B) one PDF file containing the Chapter 13 Plan, if any; (C) one text file containing the names and addresses of creditors and other parties in interest filed in compliance with the Clerk's Special Requirements for Mailing Matrixes.

Documents filed on disk that require signatures must include the typed name of the signatory preceded by "/s/" in the space where the signature would otherwise appear.

When a settlement agreement or similar document that requires signatures from more than one party is filed electronically, the filing party must check the Judge's procedures on the Court's Website in order to determine if the Judge assigned to the case has specific instructions for filing a document of this nature. If the Judge assigned to the case does not have specific instructions, then the document bearing all the necessary signatures: (1) may be scanned; (2) may be filed in a PDF format provided that the filing user certifies that all parties whose signatures are required have consented to the document and endorsed the filing; or (3) in any other manner approved by the Court. Local Form No. 26, Settlement and Certification of Counsel, must be filed with the document attached.

Orders must be filed as a separate PDF document when a motion, application, objection or other request for relief is filed on disk or scanned at the Clerk's Office.

A Certificate of Service filed as part of a motion, application, objection or other request for relief should be filed as part of the motion in one PDF document.

The signature of the debtor(s) authorizing the filing of the bankruptcy case shall be accomplished by filing an original executed paper version of the Declaration Re: Electronic Filing, Local Form No. 1, at the time the petition is filed. Both debtors must sign the authorization when a joint petition is filed. The petition may be dismissed if the declaration is not filed.

Submission of the bankruptcy petition, schedules, and statements in accordance with this Court Procedure shall be deemed in compliance with the Electronic Case Filing Procedures reference in Local Form #1.

In accordance with Local Rule 5005-3, only paper documents shall be filed when the Court has approved filing the document under seal. The paper documents which have been placed under seal shall be delivered to the Clerk. The sealed documents will not be scanned into the CM/ECF system. The Clerk will retain the paper documents according to the Court's retention policy.

**GCP #5A DUTY TO MAKE PAYMENTS, FILE TAX RETURNS, FILE REPORTS, AND PAY TAXES IN CHAPTER 11**

A. The trustee or debtor-in-possession in a Chapter 11 case shall keep current and pay when due any debt which has arisen since the entry of the order for relief, including any debt arising from rentals or other money due on account of real estate leases, provided, however, that any debt for utility service shall be paid not later than the due date.

B. The trustee or debtor-in-possession in a Chapter 11 case shall:

1. timely file all federal and territorial tax returns with the applicable taxing bodies during the pendency of the bankruptcy case;

2. file copies of the most recent balance sheet and profit and loss statement of non-individual debtors with the Clerk;

**GCP # 5B LANDLORD PAYMENTS**

A rent deposit as required by 11 U.S.C. §362 tendered with the original petition must be paid to the lessor not the Clerk and delivered to the Clerk of the Court not later than the next immediate business day following the day the petition is filed.

**GCP #6 REQUESTS FOR TRANSCRIPTS**

A. Form of Request: Parties may request transcripts or an audio recording on cassette or compact disk by either filing a transcript request with the Clerk on a form available from the Clerk and the Court's Website or by verbal request made to the court stenographer or the Electronic Court Reporter Operator ("ECRO"), as applicable. If a verbal request is made, the party requesting the transcript must also provide the court stenographer or the ECRO with a written request containing the details of the request and payment as described below the request will be processed.

B. If the request is in connection with an appeal, Local Rule 8006-1 also must be adhered to.

C. Contents of Request: The requesting party shall provide the court stenographer or the ECRO with:

1. the name of the case,
2. the bankruptcy and motion or adversary numbers,
3. the date of the hearing,
4. the name of the Judge who heard the matter, and
5. the requesting party's name, telephone number, and mailing address and/or email address and/or fax number.

D. Payment: The court stenographer or the ECRO shall estimate the cost of the transcript and the party requesting the transcript shall provide appropriate payment before the transcript request is processed. Checks written on a firm's business account will be accepted. Pro se litigants must submit payment by money order or certified cashier's check.

E. Release of Transcript to Requesting Party: When the completed transcript is received by the court stenographer or the ECRO, the court stenographer or the ECRO shall notify the requesting party that the transcript is available and shall notify the requesting party whether the actual cost of the transcript exceeded the estimate. If the actual cost of the transcript exceeded the estimate, the transcript will not be released until the additional payment is made. If the actual cost is less than the amount paid, the excess amount will be refunded.

F. Expedited Transcripts: If the requesting party wants an expedited transcript the requesting party shall notify the court stenographer or the ECRO at the time the transcript is ordered. There is an extra cost associated with expedited transcripts.

#### **GCP # 7 GOVERNMENT PROOF OF CLAIM DEADLINE DATE**

The Clerk shall set a government deadline for filing proofs of claim in each bankruptcy case filed in the U.S. Virgin Islands. The deadline will be included on the docket of the case. When proofs of claim are required to be filed in the case, parties in interest will be notified of the bar date in the notice that sets the date of the §341 Meeting (i.e., the first meeting of creditors).

The government proof of claim date shall not be modified when a case is converted to a different Chapter of the Bankruptcy Code. Governmental entities shall file proofs of claim within the greater of 180 days from the date the order of relief was first entered in the case or the proof of claim deadline date set for other creditors after the conversion.

The government proof of claim date shall not be modified when the Chapter 7 Trustee files a Notice of Assets and the Clerk notifies parties to file claims. Governmental entities shall file proofs of claim within the greater of 180 days from the date the order of relief was first entered in the case or the proof of the claim deadline date set for other creditors by the Clerk.

## **GCP # 8 CASH COLLATERAL GUIDELINES**

A. Any consensual cash collateral order must contain the following provisions:

1. A statement that:

- a. there has been compliance with service requirements;
- b. the secured creditor asserts priority lien in the cash collateral, together with a specific identification of the assets that are generating or will generate cash collateral (i.e., cash on hand, proceeds of inventory sales, etc.), and the amount of the indebtedness allegedly secured;
- c. the debtor has an immediate need for the use of cash collateral to preserve its assets, fund its business operation, purchase inventory, etc.;
- d. debtor's reaffirmation of existing terms and conditions of existing financing documents with secured creditors.

2. Relief:

- a. Grant and define adequate protection to Secured Creditor (and its successor and assigns) pursuant to §361 and §363, including monthly adequate protection payments (if appropriate), subject to later allocation as to fees, interest and principal contingent upon results of §506(a) motions, if any.
- b. Grant Secured Creditor replacement liens in postpetition assets to the same extent and priority as existed at the date of bankruptcy.
- c. Grant Secured Creditor super-priority administrative claim to the extent of the diminution in the value of the secured creditor's collateral after the date of bankruptcy.
- d. Provide for establishment of a segregated DIP account into which cash collateral should be deposited.
- e. Restrict use of cash collateral to pay specified categories of operating expenses, per budgets to be attached to Order or subsequently filed with the Court.
- f. Require that Debtor maintain insurance.
- g. Require submission of periodic (weekly, bi-weekly, monthly) reports regarding use of cash, aging of accounts receivable, etc.
- h. Equality of treatment for carve-outs as between professionals for the Debtor and professionals for the Committee of Unsecured Creditors (or other committees) and other postpetition creditors.
- i. Provide that the prepetition liens of the Secured Creditor shall be continued postpetition as to both prepetition and postpetition assets, but the value thereof at the time of the filing of the bankruptcy



petition initiating the case, plus accruals and advances thereafter, and minus payments to the Secured Creditor thereafter. No additional financing statements or mortgages need be filed to perfect such postpetition liens and security interest (but may be filed if the Secured Creditor chooses).

- j. Identify the time period to which the Order is applicable and provide that even if authorization to use cash collateral expires, adequate protection/liens will continue to be effective until/unless otherwise modified by the Court.
- k. Set final hearing date and provide that summaries of documents relied upon by Secured Creditor in asserting perfected security interest be filed with the Clerk by such date. The summaries shall comply with the court's Electronic Case Filing Procedures.

B. The following provisions should not be included:

- 1. Stipulation as to the perfection, validity or priority of secured claims that are binding on any party other than the debtor, without affording other interested parties a reasonable time to challenge same.
- 2. Stipulations which reduce the time period within which parties in interest can challenge the perfection, validity, priority or amount of secured claims to (i) less than ninety (90) days from the engagement of counsel for the Committee of Unsecured Creditors or, if no counsel or no Committee is appointed, (iii) less than 120 days after the case is filed.
- 3. In cases where the Secured Creditor asserts liens on accounts receivable pursuant to asset based revolving credit facilities, provisions which recharacterize the "use of cash collateral" into "post-petition advances," without regard to whether the so called "post-petition advance" is a new loan, or the use of a prepetition receivable.
- 4. Provisions which release potential claims or causes of action by the estate against the lender.
- 5. Provisions which grant automatic relief from stay upon a material default under the cash collateral order (but secured creditor's entitlement to an expedited hearing in the event of a material default could be recognized).
- 6. Provisions which grant cross collateralization on unencumbered assets, absent extraordinary circumstances.

**GCP #9 SALE OF ESTATE PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS**

**A. Sale of Property**

1. All sales not in the ordinary course of debtor's business shall be by motion, except where the seller also seeks:

- a. to determine the validity, priority, or extent of a lien or other interest in property, other than the avoidance of a lien or other transfer of property exempt under §522(f) of the Code, or
- b. to obtain approval pursuant to §363(h) of the Code for the sale of both the interest of the estate and of a co-owner in property.

In such excepted cases, the seller shall file an adversary and proceed by the adversary procedures including service of a summons set forth in Part VII of the Bankruptcy Rules and any Local Rules and procedures in effect in this District. A proposed order approving the sale shall be attached to the motion or complaint.

B. Before filing any motion for sale, the seller shall obtain from the appropriate court personnel a sale hearing time and date which shall normally be a time and date on which the Court regularly hears motions. Provided, however, if the seller anticipates that the sale hearing will take more than a limited time the seller shall so notify the appropriate court personnel and obtain a time and date which will allow sufficient time for the Court to dispose of the motion to sell property.

C. Responses and objections shall be filed and served at least fifteen (15) days prior to the sale hearing date. In addition to parties required to be served, responses and objections shall be filed on the initial offeror and counsel. The objecting party must attend the hearing or file and serve a notice of withdrawal of the objection at least two (2) business days prior to the hearing. Higher or better bids are not an objection to the motion.

D. If the property to be sold has an aggregate value of less than the value specified in Fed.R.Bankr.P. 6004 (d), notice by publication shall be at the discretion of the seller.

**E. Notice Requirements**

1. The seller shall send the Notice of Sale by first-class mail, or electronically to those parties who consent to receipt of electronic notice, to:

- a. the debtor and debtor's counsel;
- b. the trustee and trustee's counsel, if any;

- c. all indenture trustees and their counsel, if any;
- d. lien holders;
- e. all creditors;
- f. all committees appointed pursuant to the Code or to their authorized agents and their counsel, if any;
- g. the United States as required by Fed.R.Bankr.P. 2002(j); and
- h. the United States Trustee.

2. The debtor in possession or trustee may file a motion, served on all creditors and parties in interest, to establish a procedure for selling less than substantially all the assets of the estate or those assets of less than substantial value. The motion to establish sale procedure may provide that the notice of sale be served on a limited list of creditors and parties in interest. Each such list must be set forth with particularity in the motion to establish the sale procedure.

3. Addresses for Notice of Sale and Motions to Sell: Any notice required to be served under these procedures shall be addressed as directed in a request for notices filed with the Clerk but if a different address is stated in a proof of claim duly filed, that address shall be used; otherwise, to the address shown in the list of creditors in the schedules. Service may be made electronically if consent exists.

F. Conduct of Sale Not in The Ordinary Course of Business Pursuant to Fed.R.Bankr.P. 6004(f)

1. The Notice of Sale and publication of the Notice must contain the following information:

- a. the case bankruptcy name and number and the adversary name and number or document number of the motion;
- b. a brief description of the property to be sold (examples: personalty (Dodge Truck) or realty (Parcel 1 Estate ABC, as shown on PWD # 123, recorded in the Office of the Recorder of Deeds for the Division of St. Thomas and St. John/ St. Croix on \_\_\_\_\_ at \_\_\_\_\_);
- c. the date, time and place of sale hearing;
- d. the date by which objections to the sale must be filed and served;

- e. a statement of the amount of the initial offer and that higher or better offers will be considered at the hearing;
- f. the name, address, and telephone number of the person to contact for terms and conditions of sale or to examine the property; and
- g. hand money requirements at the time of the hearing.

2. Publication: Notice of any proposed sale of property with a selling price of less than \$50,000 shall be advertised by the seller by publication once in a newspaper of general circulation in the U.S. Virgin Islands. Advertising for sales of property with a selling price greater than \$50,000 shall be determined by motion and court order. The publication shall be made no more than twenty (20) nor less than five (5) calendar days before the scheduled date of sale.

Deleted:

3. Proofs of publication of the advertising must be filed when received by movant or representation made to the Court at the time of the sale hearing that publication was made and that proofs of publication will be filed when received by the movant.

Deleted:

4. Reports of Sale: An itemized Report of Sale shall be filed with the Court within five (5) calendar days of the date of consummation of the sale.

Deleted:

**GCP # 10 PROCEDURES GOVERNING MEDIATION IN BANKRUPTCY CASES**

**A. PRELIMINARY STATEMENT**

1. "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

2. *Referral by Bankruptcy Judge.* Except as hereinafter provided, the Bankruptcy Judge may hereafter order any contested bankruptcy matter or selected issue to be referred to mediation.

**B. THE MEDIATION**

1. Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within sixty (60) days of the order of referral.

2. Role of Counsel. Unless otherwise ordered by the court, counsel to the parties shall attend and participate in the mediation conference. The role of counsel shall be limited to

general consultation pursuant to the rules governing the attorney-client privilege.

3. Notice. Within fifteen (15) days after the order of referral, the court or its designee, who may be the mediator, shall notify the parties in writing of the date, time, and place of the conference.

4. A mediator is authorized to change the date and time for the mediation conference, provided the conference takes place within fifteen (15) days of the date set forth in (1)(A). Any continuance of the conference beyond this fifteen (15) day period must be approved by the judge to whom the case is assigned.

5. The mediation conference shall take place in a courtroom designated by the court or any other place designated by the court.

6. *Adjournments.* The mediator may adjourn the mediation conference at any time and may set a date and a time for reconvening the adjourned conference, provided the mediation conference takes place within fifteen (15) days of the original date set for the conference. Any continuance beyond this fifteen (15) day period must be approved by the presiding judge to whom the case is assigned. No further notification is required for parties present at the adjourned conference.

7. *Role of Counsel.* Mediation will proceed in the absence of counsel, unless otherwise ordered by the court. Counsel shall only be permitted to communicate privately with their clients, when the parties are not attending scheduled mediation proceedings.

8. *Communication with Parties.* The mediator may meet and consult with the parties or their counsel, on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting. The mediator can consult with any party or their counsel, only upon agreement of all parties. The mediator shall keep a written record of any and all meetings conducted with the parties or their counsel, and such record shall be made available to the parties.

#### C. MOTION TO DISPENSE WITH MEDIATION.

A party may move, within fifteen (15) days after the order of referral, to dispense with mediation if:

1. The issue to be considered has been previously mediated between the same parties;
2. The issue presents a question of law only;
3. Other good cause is shown.

#### D. THE MEDIATOR.

1. Certification of Mediators. The court shall certify as many mediators as it determines to be necessary.
2. Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28 U.S.C. Section 453 before serving as a mediator.
3. A list of all persons certified as mediators shall be maintained with the court.
4. The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following:
  - a. Mediation procedures;
  - b. The differences between mediation and other forms of conflict resolution, including therapy and counseling;
  - c. The circumstances under which the mediator may meet alone with either of the parties or with any other person;
  - d. The confidentiality provision as provided for by Title 5, Section 854 of the Virgin Islands Code;
  - e. The duties and responsibilities of the mediator and the parties;
  - f. The fact that any agreement reached must be reached by mutual consent of the parties;
  - g. The information necessary for defining the disputed issues.
5. The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on the mediator's possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28 U.S.C. Section 144 and shall disqualify him/herself in any action in which he/she would be required under Title 28 U.S.C. Section 455 to disqualify him/herself if he/she were a judge.
6. *Mediator's Liability.* A mediator appointed by the court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.
7. *Disqualification of a Mediator.* Any party may move the court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their disqualifications which would be grounds for disqualification. If the court rules

that a mediator is disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

#### E. APPOINTMENT OF THE MEDIATOR.

1. Within ten (10) days of the order of referral, the parties may agree upon a stipulation approved by the court designating:

a. A certified mediator; or

b. A mediator who does not meet the certification requirements of the rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

2. If the parties cannot agree upon a mediator within ten (10) days of the order of referral, the plaintiff or petitioner shall so notify the court within ten (10) days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the court.

#### F. COMPENSATION OF THE MEDIATOR.

1. The mediator shall be compensated by the parties. The presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Each party shall pay one-half or such other proportionate share of the total charges of the mediator as may be agreed upon, unless the mediator and/or the court determines that one party has not mediated in good faith.

a. *No Agreement.* If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

2. *Agreement.* If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the

parties' consent. If the agreement is not filed, a joint stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court.

#### G. CERTIFICATION OF MEDIATORS.

For certification, a mediator:

1. Must complete a minimum of twenty (20) hours in a training program approved by the Bankruptcy Court; and,
2. Must observe a minimum of four mediation conferences conducted by a certified mediator and conduct four mediation conferences under the supervision and observation of a court certified mediator;
3. Standing: A mediator must also meet one of the following minimal requirements:
  - a. The mediator may be a member in good standing of the Virgin Islands Bar with at least five years of Virgin Islands practice, and be an active member of the Virgin Islands Bar within one year of application for certification; or,
  - b. Paragraph (1) notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a Bankruptcy Court mediator a retired judge who was a member of the bar in the state or Territory in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (g)(1)(A); or,
  - c. The mediator may be the holder of a master's degree and be a member in good standing in his or her professional field with at least five (5) years of practice in the Virgin Islands; and,
4. Notwithstanding the foregoing procedures which are the preferred method of certification, the court may, in the absence of an available pool of certified mediators, appoint as a mediator a qualified person acceptable to the court and the parties. Also, a person certified as a mediator by the American Arbitration Association, or any other national organization



approved by the Bankruptcy Court shall be deemed to qualify under this section as a Bankruptcy Court Mediator.

H. TERMINATION OF MEDIATION.

Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by order of the court or by stipulation of the parties, but in any event the process shall not exceed ninety (90) calendar days.

I. TYPES OF MATTERS SUBJECT TO MEDIATION.

The Court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. Fed. R. Bankr.P. 7016 hereby is made applicable in which mediation is requested in accordance with the Mediation Program.

J. CONFIDENTIALITY OF MEDIATION PROCEEDINGS.

1. *Disclosure Privilege.* Each party involved in a court-ordered mediation conference has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding.

2. *Inadmissibility of Mediation Proceedings.* Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

K. INTERIM OR EMERGENCY RELIEF.

A mediator may apply to the court for interim or emergency relief at any time, at the initiation of the mediator upon consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

L. SANCTIONS FOR FAILURE TO APPEAR.

If a party, without good cause, fails to appear at a duly noticed mediation conference or fails to participate in the mediation in good faith, the court shall impose sanctions, including an award of mediator and attorney fees and other costs against the party failing to appear or found not to have mediated in good faith. If, in the opinion of the mediator, a party has not participated in the mediation in good faith, and notwithstanding any other provisions of this rule, the mediator shall notify the referring judge in writing who shall

make such further proceedings as appropriate to resolve the issue. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body of the entity. Otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

1. The party or its representative having full authority to settle without further consultation; and,
2. A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.