

Rules and Regulations

Bankruptcy Mediation Program for the District of Colorado

SECTION 1. Administration.

1.1. Standards Committee. The Standards Committee (“Committee”) for inclusion on the Bankruptcy Mediation Panel (“Panel”) shall be composed of a Chair and such Committee members as the standing bankruptcy representative serving on the Faculty of Federal Advocates (“FFA Member”) shall appoint. The Committee shall: (1) review and approve the format of all application and reference forms used, if any; (2) determine whether particular applicants have met the standards for selection; (3) grant waivers or modifications of specific inclusion requirements or deadlines for good cause shown; (4) decide all requests for reconsideration of denials, expirations, or revocations of, inclusion.

1.2. Term of Service. The Chair and Committee members shall serve in the reasonable discretion of the FFA Member.

1.3. Annual Report. The Chair shall provide an annual report, in the form and manner of his or her choosing, to the FFA Member and to the Chief Judge of the Bankruptcy Court for the District of Colorado. The report shall identify the current members of the Panel, analytics of web traffic (if available), utilization of the *pro bono* component, and any other information which is requested or that the Chair deems helpful.

1.4. Responsibilities of the Chair. The Chair shall be responsible for maintaining the list of mediators on the Panel and ensure compliance with these Rules and Regulations. The Chair will work with the FFA Member, the Faculty of Federal Advocates, and as appropriate the Chief Judge of the Bankruptcy Court for the District of Colorado when administering the program. The Chair shall make publicly available (ideally on the FFA website) the list of Panel mediators. With the exception of *pro bono* litigants, potential clients shall be free to choose as they wish from the publicly available list. As described herein the Chair will administer the *pro bono* component of the program.

SECTION 2. Application Procedures and Fees.

2.1. Application Forms. Application forms for selection, if any, shall be received for consideration of inclusion on the list of bankruptcy mediators for the District of Colorado. Applications for inclusion shall be made in writing on such forms as the Chair may approve.

2.2. Fees. All fees shall be set by the Chair and FFA Member and may be changed at any time. All fees collected shall be used at the discretion of the FFA in the administration of its programing and consistent with the fulfillment of its mission.

2.2.1. Application Fee and Forms. Each applicant shall submit an application fee, if any, along with the completed Application. By submitting an application, if accepted to the Panel, the

applicant is agreeing to adhere to the Code of Conduct for Mediators as promulgated by the Mediation Association of Colorado.

(a) Current Fee: None.

(b) Form. None, email a letter of interest to sitting Chair, Robertson Cohen, rcohen@cohenlawyers.com if you are interested.

2.2.2. Annual Fee and Disclosure Affidavit. Upon request by the Chair, commencing January 1, 2020, each member of the Panel must: (1) pay, by January 1 of each year following the initial year of membership, an annual fee for continued inclusion on the Panel and (2) shall disclose any outstanding or informal or formal disciplinary actions or malpractice claims.

2.3. Procedures.

2.3.1. Opening Files. Upon receipt of an application, the Committee shall determine if the minimum standards for inclusion are met and, if so, add the applicant to the Panel.

2.3.3. Reapplication for Inclusion. An applicant who fails to meet the requirements as of the initial application, who is denied inclusion, denied reinclusion, or a mediator whose inclusion was revoked, expired or was voluntarily surrendered, may reapply for inclusion in accordance with these Rules and Regulations. The applicant must apply and pay the appropriate application fee. In addition, the applicant must disclose that he/she had previously been denied inclusion or reinclusion, that his/her inclusion had been revoked, had expired or had been voluntarily surrendered and the reasons for the denial, revocation, expiration or voluntary surrender of inclusion or reinclusion. The applicant's prior file will be available to the Committee and the applicant may be required to provide additional information relating to the denial, revocation, expiration or voluntary surrender.

SECTION 3. Minimum Standards for Inclusion.

3.1. Standards for Inclusion. All applicants who meet the requirements set forth in these Rules and Regulations shall be eligible for inclusion on the Panel without regard to and without discrimination on the basis of race, religion, gender, sexual orientation, disability, or age.

3.1.1. Licensure and Practice.

(a) Practice. The applicant must be engaged in the continuous practice of law for at least the five-year period ending on December 31 of the calendar year in which the application is submitted; provided, however, that an interruption in continuous practice of up to one year for a sabbatical or leave of absence shall be permitted so long as the applicant has otherwise engaged in the continuous practice of law for at least five years exclusive of the interruption. Retirement from legal practice, service as a judge of a state trial court having general civil (e.g., not exclusively family, criminal or probate law) jurisdiction, of a federal court (including Bankruptcy Court), or as a full-time professor of law at an accredited United States law school may be considered as a basis for waiver of this requirement in the discretion of the Committee.

(b) Licensure. The applicant must be licensed to practice law and an active member of the bar in at least one or more states or territories of the United States or the District of Columbia. The applicant must be a member in good standing of the bars of all states in which the applicant is licensed to practice (or must have been a member in good standing at the time any license may have been voluntarily surrendered). The applicant is responsible for ensuring that each state in which the applicant is licensed to practice law provides the Chair a good standing report upon request.

Retirement from legal practice, service as a judge of a state trial court having general civil (e.g., not exclusively family or probate law) jurisdiction, of a federal court (including Bankruptcy Court), or as a full-time professor of law at an accredited United States law school may be considered as a basis for waiver of this licensure requirement in the discretion of the Committee.

(c) Certification. Applicant must have taken a training in basic mediation practices (40-hour training course) and received a certificate.

(d) Pro Bono. The applicant will be expected to mediate cases on a *pro bono* basis from time to time. The Chair will review and match the Panel member with the case as appropriate and attempt to ensure as even of a distribution among members as possible. A litigant is eligible for *pro bono* mediation from a member of the Panel if he or she meets the same requirements as set for in the Faculty of Federal Advocates Bankruptcy *Pro Bono* Program, as may be updated and amended from time to time.

3.1.2. Integrity. The applicant must be a person of professional integrity, as that concept is interpreted by the ethical rules of the state or states in which the applicant is licensed to practice law. By requesting inclusion on the Panel, the applicant agrees to disclose to the Chair any pending or prior formal or informal reprimand, disciplinary action, complaint or inquiry with a grievance committee of any bar association or with the designated disciplinary entity of any state, any pending or prior felony criminal charge or conviction, and any pending or prior malpractice complaint, judgment, settlement, or admission of malpractice. If an applicant fails to disclose any of the foregoing, the Committee, in its discretion, may deny the application.

Additionally, at any time, the Committee may initiate its own inquiry and applicant agrees that the application authorizes Committee to obtain confidential information from any person or association having knowledge of facts that are relevant to the applicant's personal integrity. The Committee may suspend the processing of an application while any of the above proceedings is pending.

The Committee will accept as final the findings of any court or body authorized to impose professional discipline. In such instances, the application shall be denied and the applicant may not reapply for inclusion for a period of three years following the imposition of formal or informal discipline, any criminal conviction, malpractice judgment or admission of malpractice, unless the applicant establishes to the satisfaction of the Committee that such factors are not relevant to the applicant's fitness to be recognized as a mediator. The Committee may deny an application for other good cause related to an alleged disciplinary violation, alleged criminal conduct, or alleged malpractice.

3.1.3. Substantial Involvement.

(a) Bankruptcy Law. The applicant must make a satisfactory showing of experience through substantial involvement in the practice, arbitration or mediation of bankruptcy law. Substantial involvement shall mean that the applicant has devoted a minimum of thirty percent or 40 hours per year (whichever is greater) during each of the three years immediately preceding the date of the application.

Substantial involvement is not necessarily limited to court appearances, but may include briefing, argument, interrogation of witnesses, negotiation of settlements or workouts, or drafting. The activity must relate to an adversary proceeding or contested matter and must have been substantial in relation to the total efforts devoted to the adversary proceeding or contested matter.

The substantial involvement requirements shall be applied to all applicants including, but not limited to, private practitioners, government lawyers, professors of law, Chapter 7 Panel Trustees, Chapter 13 Trustees, United States Trustees, , Assistant United States Trustees, or Trial Attorneys for United States Trustees; but shall be waived for an applicant who has served as a full-time judge of a federal court for at least five years preceding the application. The substantial involvement requirements may also be waived by the Committee for retired attorneys who practiced law for at least 15 years and in the 5 years immediately preceding retirement met the requirements as set forth in this subsection. Service as a professor of law does not constitute the practice of law for the purposes of this subsection.

SECTION 4. Renewal Application Procedures and Fees.

4.1. Application for Renewal. The Chair in his or her sole discretion shall have the option to require the mediators on the Panel to renew and resubmit and application to ensure that the minimum standards remain met. There may be a fee assessed for renewal.

4.2. Renewal Forms. Applications for renewal shall be made in writing on such forms as the Committee may approve. The Committee may require an applicant to submit information in addition to that called for on the reinclusion forms.

4.3. Minimum Standards for Renewal. In order to qualify for renewal, the applicant must meet and certify that the minimum standards as set forth herein have been met.

SECTION 5. Revocation, Suspension, Expiration and Surrender of Inclusion.

5.1. Revocation of Inclusion. The Committee may revoke membership on the Panel if:

(a) Inclusion was granted contrary to the rules and regulations of the Panel; or (b) The inclusion was granted to a person who was not eligible to acquire a inclusion, or who made any false representation or misstatement of material fact to the Committee; or (c) The mediator no longer meets the qualifications established by the Committee; or (d) The mediator has been disciplined, reprimanded, disbarred or suspended from practice by any state or federal court or agency, or is the subject of a final malpractice judgment, or has admitted to malpractice.

5.1.2. Revocation Procedure. Prior to revocation of membership on the Panel, the Committee shall advise the mediator of the proposed action, the reasons therefore, and the mediator's right to file a written response. Said notice shall be in writing sent via email to the mediator's last known address. The mediator's written response must be received by the Committee within thirty days after the date of the notice. After the thirty-day response period has passed, the Committee shall decide whether to revoke the inclusion after considering the grounds for revocation, the mediator's response, if any, and any additional information obtained by the Committee. The mediator shall be advised, in writing, of the Committee's decision.

5.2. Suspension of Inclusion.

5.2.1. Grounds for Automatic Suspension. The inclusion of any mediator on the Panel shall be automatically suspended without prior notice if:

- (a) The mediator has been disbarred; or
- (b) The mediator has been suspended from practice by any state or federal court or agency; or
- (c) The mediator's right to accept clients has been suspended pending an investigation by a federal or state agency, provided the investigation is for an offense that would likely reflect negatively on the mediator's professional integrity; or
- (d) The mediator does not meet the expected level of *pro bono* participation as determined by the Chair; or
- (e) The mediator has materially breached the Code of Conduct for Mediators as promulgated by the Mediation Association of Colorado.

5.2.2. Notice of Suspension. The mediator shall notify the Committee in writing of the occurrence of any grounds for automatic suspension as identified in § 5.2.1. The Committee shall notify the mediator in writing of any suspension of inclusion and the mediator's right to petition for reinstatement pursuant to § 5.2.3; however, suspension shall be automatic upon the occurrence of an event within the scope of §5.2.1, regardless of whether such notice has yet been transmitted.

5.2.3. Reinstatement of Inclusion after Suspension. After a suspension of inclusion has occurred, the mediator may petition the Committee for reinstatement of his/her inclusion on the Panel. The petition may be informal but must be in writing and must adequately identify the reason for the suspension, the date on which the suspension first became effective, the reasons for which the mediator believes that his/her inclusion should be reinstated after having been suspended, and the relief requested. Nothing in this section in any way limits the Committee's ability to seek revocation of a mediator upon learning of a mediator's suspension of inclusion.

5.3. Expiration of Inclusion. The failure of a mediator to timely renew as set forth in Section 4 herein shall result shall constitute grounds for suspension.

5.4. Investigation. The Committee shall have the authority to contact any person or entity having relevant information with respect to any proceeding pursuant to this Section.

SECTION 6. Amendments.

6.1. Procedure. These Rules and Regulations may be amended from time to time by the Committee subject to approval by majority vote of the FFA Board of Directors.