Rule 9019-2. Mediation.

(A) Registration of Mediators.

(1) Mediation Register. The clerk shall establish and maintain a register of qualified attorneys and retired federal and state judges who have registered to serve as mediators in adversary proceedings and contested matters in cases pending in the court. Attorneys and retired federal and state judges who meet the qualifications described in subdivision (2) shall be so registered. This subdivision shall not preclude an individual from serving as a mediator if the parties to the dispute agree upon the selection of that mediator. However, a mediator selected by the parties and not registered under this rule nonetheless shall comply with the other provisions of this rule where applicable.

(2) Qualifications of Mediator. To qualify for service as a mediator under this rule, a mediator must:

(a) be an active member of The Florida Bar and qualified to practice in this court or be a retired federal or state judge;

(b) have been admitted to practice in a state or federal court for at least the past 5 years or be a retired federal or state judge;

(c) have completed a minimum of 40 hours in a circuit court mediation training program certified by the Florida Supreme Court or be certified by the Florida Supreme Court as a circuit court mediator; and

(d) agree to accept at least 2 mediation assignments per year in cases where at least one party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono if no litigant is able to contribute compensation.

(3) Procedures for Registration. Each attorney or retired federal or state judge who wishes to be included on the register must file the Local Form "Verification of Qualification to Act as Mediator".

(4) Removal from Register. The clerk shall remove a mediator from the register of mediators at the mediator's request or at the direction of a majority of the judges of the court in the exercise of their discretion. If removed at the mediator's request, the mediator may later request to be added to the register by submitting a new verification form. Upon receipt of such request, the clerk shall add the qualified mediator to the register.

(5) Mediator's Oath. Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator. The oath may be administered

by any person authorized to administer oaths, and proof of the oath or affirmation shall be included on the Local Form "Verification of Qualification to Act as Mediator".

(6) **Compensation of Mediators.** Mediators shall be compensated at the rate set by the U.S. District Court for the Southern District of Florida and as adopted by this court by local rule or administrative order or at such rate as may be agreed to in writing by the parties and the mediator selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference, but a case trustee's or debtor in possession's share of the cost shall be an expense of the estate.

(B) Referral of Matters to Mediation.

(1) **Manner of Referral.** The court may order the assignment of a matter or proceeding to mediation at a pretrial conference or other hearing, upon the request of any party in interest or the U.S. trustee, or upon the court's own motion. The court shall use the Local Form "Order of Referral to Mediation", which shall: (a) designate the trial or hearing date, (b) direct that mediation be conducted not later than 10 days before the scheduled trial or hearing, and (c) require the parties to agree upon a mediator within 7 days after the date of the order. The parties shall timely file the Local Form "Notice of Selection of Mediator", failing which the clerk shall designate a mediator from the clerk's register on a random basis within court divisions using the Local Form "Notice of Clerk's Designation of Mediator" and serve this notice on the required parties. Notwithstanding the assignment of a matter or proceeding to mediation, the court shall set such matter or proceeding for trial, final hearing, pretrial conference or other proceeding as is appropriate in accordance with the Bankruptcy Rules and these rules.

(2) **Disqualification of Mediator for Cause.** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall be disqualified in any action in which the mediator would be required to do so if the mediator were a judge governed by 28 U.S.C. § 455.

(3) **Replacement of Mediator.** If any party to the mediation conference, for any reason, objects to the designated mediator, then within 3 days from the date of the notice of designation, the objecting party shall file with the clerk, and serve upon the mediator and all other parties to the mediation, a request for an alternate mediator including in the request the name of any alternate mediator already agreed upon by the parties. If the alternate mediator has been agreed upon, the clerk shall designate that mediator. Otherwise, the clerk shall designate a second mediator from the register of mediators on a random basis and shall serve a second notice of designation on all parties to the mediation conference and on the designated mediator. Each party shall be entitled to one challenge to any clerk-designated mediator. A mediator who is unable to serve shall, within 5 days from the date of the notice of designation, serve on the clerk and all parties to the

mediation a written notice of inability to serve, and the clerk shall designate an alternate mediator in the manner described above.

(4) **No Stay.** Notwithstanding a matter being referred to mediation, discovery and preparation for trial or final hearing shall not be stayed by mediation.

(5) **Types of Cases Subject to Mediation.** Any adversary proceeding or contested matter may be referred by the court to mediation.

(C) Mediation Conference.

(1) **Notice and Procedures.** Upon consultation with the parties and their attorneys, the mediator shall fix a reasonable time and place for the mediation conference, except as otherwise agreed by the parties or by order of the court, and shall give the parties at least 10 days' advance written notice of the conference. The conference shall be set as soon after the entry of the mediation order and as far in advance of the final evidentiary hearing as practicable. In keeping with the goal of prompt dispute resolution, the mediator shall have the duty and authority to establish the time for all mediation activities including a deadline for the parties to act upon a settlement or upon mediated recommendations.

(2) **Attendance of Parties Mandatory.** An attorney who is responsible for each party's case shall attend the mediation conference. Each individual party and the representatives of each non-individual party shall appear with the full authority to negotiate the amount and issues in dispute without further consultation. The mediator shall determine when the parties are to be present in the conference room. No party can be required to participate in a mediation conference for more than 2 hours.

(3) **Public Entity as Party.** If a party to mediation is a public entity, either a federal agency or an entity required to conduct its business pursuant to Chapter 286, Florida Statutes, 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.

(4) **Failure to Attend.** The mediator shall report to the court willful failure to attend the mediation conference or to participate in the mediation process in good faith, which failure may result in the imposition of sanctions by the court.

(D) Recommendations of Mediator. The mediator shall have no obligation to make any written comments or recommendations other than the report required by subdivision (E). If a written recommendation is prepared, no copy shall be filed with the court.

(E) Post-Mediation Procedures. Within 5 days after the mediation conference, the mediator shall file with the court a report showing compliance or non-compliance by the parties with the

mediation order and the results of the mediation, using the Local Form "Report of Mediator". In the event there is an impasse, the mediator shall report that there is a lack of agreement, and shall make no further comment or recommendation. If the parties have reached an agreement regarding the disposition of the matter or proceeding, they shall prepare and submit to the court within 10 days after the filing of the mediator's report an appropriate stipulation of settlement and joint motion for its approval. Failure to file such a motion shall be a basis for the court to impose appropriate sanctions. If the mediator's report shows mediation has ended in an impasse, the matter will be tried as scheduled.

(F) Confidentiality. Conduct or statements made in the course of mediation proceedings constitute "conduct or statements made in compromise negotiations" within the meaning of Rule 408 of the Federal Rules of Evidence, and no evidence inadmissible under Rule 408 shall be admitted or otherwise disclosed to the court.

(G) Withdrawal from Mediation. Any action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding judge at any time, before or after reference, upon motion of a party and/or a determination for any reason that the case is not suitable for mediation.

(H) Compliance with Bankruptcy Code and Rules. Nothing in this rule shall relieve any debtor, party in interest, or the U.S. trustee from complying with any other orders of the court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these rules.