

HISTORICAL SUMMARY OF THE VOLUNTARY MEDIATION PROGRAM IN BANKRUPTCY COURT FOR THE EASTERN DISTRICT

The Alternate Dispute Resolution Act was signed into law by the President at the end of October 1998. The new law required District Courts to have an ADR program but left the type of program, and the structure of the program, to the individual courts. The enclosed article published in the Third Branch, the official newsletter of the Administrative Office of the U.S. Courts, gives additional detail.

Since the new law stated "including adversary proceedings in bankruptcy," it was unclear whether or not bankruptcy courts were included in the mandate of the statute. Subsequently, an opinion was rendered by general counsel for the Administrative Office advising that the new law did not include Bankruptcy Courts.

During the period of uncertainty, the Advisory Committee of the Bankruptcy Court at its March 1999 meeting discussed the issue and an ADR Sub-committee was formed to look into the desirability of the court adopting an ADR program, even though it might not be mandated by law.

At the June 1999 meeting of the Advisory Committee, the ADR Sub-committee reported that their finding was that ADR should move forward even though not mandated, which the Advisory Committee agreed with, and the sub-committee, with some change in members, was charged by the Advisory Committee to prepare a draft rule for consideration by the Advisory Committee at its October 1999 meeting. This committee is composed of Judge Williams, Bonnie Charney, Jean Campbell, Tom Bassett, Jim Hurley and Ted McGregor.

At the October 1999 meeting, the ADR Sub-committee reported that they had met several times and were in the process of drafting a general order establishing such a program, and had hopes to get it up and running as soon as possible. It was also reported that The Association had indicated that it was ready to support such a program however it could. The Advisory Committee supported the efforts and plans of the sub-committee.

The sub-committee met regularly from its formation and did prepare a general order establishing a Voluntary Mediation Program which the judges of the court signed in January 2000. By its terms, the order will become effective upon the formation of a panel of mediators. The court also approved an application form.

An announcement and solicitation for applications for appointment to the panel of mediators was sent out to the mailing list of The Association seeking persons who would like to be appointed to the panel. As of this date, eleven applications have been received, and it is anticipated that in June of 2000, orientation training will be conducted for those applicants, and following that, a Panel of Mediators will be established and the program will become effective.

The ADR Sub-committee is continuing to meet to approve various procedural forms and also to assist in developing the training. Tom Bassett has agreed to coordinate this aspect of the program.