UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE GENERAL ORDERS OF THE UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH CIRCUIT.	GENERAL ORDER NO. 9 August 28, 2012

Before THURMAN, Chief Judge, CORNISH, MICHAEL, NUGENT, BROWN, KARLIN, ROMERO and SOMERS, Bankruptcy Judges.

WHEREAS, the Tenth Circuit Court of Appeals established a mediation office ("Circuit Mediator") which began operations in 1991; and

WHEREAS, on April 20, 2009, the Bankruptcy Appellate Panel ("BAP") voted to implement a trial mediation program for a period of twelve months ("Pilot Mediation Program"), utilizing the services of the Circuit Mediator; and

WHEREAS, on August 25, 2010, the BAP voted to modify and extend the Pilot Mediation Program until September 30, 2011.

WHEREAS, on September 21, 2011, the BAP voted to extend the Pilot Mediation Program until September 30, 2012.

WHEREAS, on July 27, 2012, the BAP voted to make the Pilot Mediation Program (hereinafter, "the Mediation Program") permanent subject to further order of the Court.

Accordingly, it is **HEREBY ORDERED THAT:**

1. **Effective Date**. The Mediation Program, as set forth herein, shall

apply to appeals filed on or after October 1, 2012, subject to further order of the Court.

2.   **Automatic Referral.** All appeals filed on or after October 1, 2012, other than those involving a *pro se* party, shall be referred to the Circuit Mediator.

3.   **Mediation Conference.** The Circuit Mediator may schedule and conduct mediation conferences in any matter referred to it by the BAP. The primary purpose of the Mediation Program is to explore settlement, but case management matters may also be addressed. Participation in the Mediation Program consists of participation in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement, pursuant to Federal Rule of Appellate Procedure 33.

4.   **Participation of Counsel and Parties**. Counsel must participate in every scheduled mediation conference and in related discussions. Generally a party may participate but need not unless required by the Circuit Mediator. Conferences are conducted by telephone unless the Circuit Mediator directs otherwise.

5.   **Preparation of Counsel for Mediation Conference; Settlement Authority.** Counsel must consult with their clients and obtain as much authority as feasible to settle the case and agree on case management matters in preparing

for the initial conference. These obligations continue throughout the mediation process.
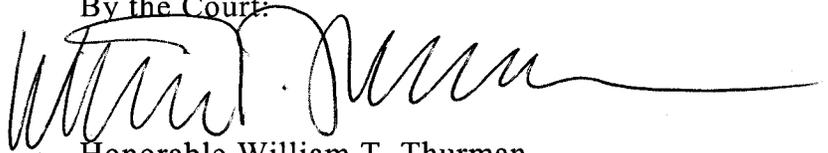
6.   **Confidentiality.** Statements made during the conference and in related discussions, and any records of those statements, are confidential and must not be disclosed by anyone (including the Circuit Mediator, counsel, or the parties; and their agents or employees) to anyone not participating in the mediation proceedings. Proceedings under this General Order may not be recorded by counsel or the parties.

7.   **Conference Order; Mediator Authority.** The Circuit Mediator may cause a judgment or order to be entered controlling the course of the case or the mediation proceedings. The Circuit Mediator is a delegate of this Court. Any conference orders or other communications from the Circuit Mediator must be treated the same as any other court directive.

8.   **Extensions for Ordering Transcript or Filing Brief.** The time allowed by Federal Rule of Bankruptcy Procedure 8007 for ordering a transcript and by Federal Rule of Bankruptcy Procedure 8009 for filing briefs is not automatically tolled pending a conference. If a conference has been scheduled, counsel may contact the Circuit Mediator for an extension of time to order a transcript or file a brief.

9.   **Sanctions.** The Court may impose sanctions if counsel or a party

violates any provision of this General Order.

By the Court:

Honorable William T. Thurman
Chief Judge