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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In Re) GENERAL ORDER NO. 95-1
)
ADOPTION OF DISPUTE RESOLUTION)
PROCEDURES FOR BANKRUPTCY)
CASES AND ADVERSARY)
PROCEEDINGS,)
_____)

1.0 **PRELIMINARY**

The court recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those disputes. The procedures established by this General Order are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of litigation.

The court also notes that the volume of cases, contested matters and adversary proceedings filed in this district has placed substantial burdens upon counsel, litigants and the court, all of which contribute to the delay in the resolution of disputed matters. A court authorized dispute resolution program, in which litigants and counsel meet with a Resolution Advocate, offers an opportunity to parties to settle legal disputes

1 promptly and less expensively, to their mutual satisfaction. By
2 this General Order the judges of the United States Bankruptcy
3 Court for the Eastern District of California adopt the Bankruptcy
4 Dispute Resolution Program ("BDRP") for these purposes.

5 It is the court's intention that the BDRP shall operate in
6 such a way as to allow the participants to take advantage of and
7 utilize a wide variety of alternative dispute resolution methods.
8 These methods may include but are not limited to: mediation,
9 negotiation, early neutral evaluation and settlement
10 facilitation. The specific method or methods employed will be
11 those that are appropriate and applicable as determined by the
12 Resolution Advocate and the parties, and will vary from matter to
13 matter.

14 2.0 CASES ELIGIBLE FOR INCLUSION IN THE BDRP

15 2.1 Unless otherwise ordered by the judge handling the
16 particular matter, all controversies arising in an adversary
17 proceeding, contested matter, or other dispute in a bankruptcy
18 case, will be eligible for referral to the BDRP except:

- 19 a. Employment and compensation of professionals;
- 20 b. Compensation of trustees and examiners;
- 21 c. Objections to discharge under 11 U.S.C. §727,
22 except where such objections are joined with disputes over
23 dischargeability of debts under 11 U.S.C. §523; and
- 24 d. Matters involving contempt or other types of
25 sanctions.

26 3.0 PANEL OF RESOLUTION ADVOCATES

27 3.1 The court shall establish and maintain a panel of
28 qualified professionals (the "Panel") who have volunteered and

1 have been chosen to serve as Resolution Advocates for the
2 possible resolution of matters referred to the BDRP.

3 3.2 Resolution Advocates shall serve as members of the
4 Panel for a one year term.

5 3.3 Applications to serve as a member of the Panel shall be
6 submitted to the BDRP Administrator by the deadlines established
7 by the court each year, shall set forth the qualifications
8 described below, and should conform to the form attached as
9 Exhibit "A". Persons serving as Resolution Advocates may apply
10 for reappointment in succeeding years.

11 3.4 In order to qualify for service as a Resolution
12 Advocate, each attorney applicant shall certify to the court that
13 the applicant:

14 a. Is, and has been, a member in good standing of the
15 bar of any state or of the District of Columbia for at least five
16 (5) years;

17 b. Is a member in good standing of the federal courts
18 for the Eastern District of California;

19 c. Has devoted a minimum of thirty percent (30%) of
20 his/her practice to bankruptcy law or debtor/creditor rights
21 during each of the five (5) years immediately preceding the
22 application; and

23 d. Is willing to serve as a Resolution Advocate for
24 the next one year term of appointment, and to undertake to
25 evaluate or mediate matters no more often than once each quarter
26 of that year, subject only to unavailability due to conflicts,
27 personal or professional commitments, or other matters which
28 would make such service inappropriate.

1 3.5 Each non-attorney applicant shall submit a statement of
2 professional qualifications, experience, training and other
3 information demonstrating, in the applicant's opinion, why the
4 applicant should be appointed to the Panel. In addition, such
5 applicants shall also make the same certification required of
6 attorney applicants as set forth in ¶3.4(d).

7 3.6 Each appointment year the judges of the court will
8 select the Panel from the applications submitted, giving due
9 regard to alternative dispute resolution training and experience
10 and such matters as professional experience and location so as to
11 make the Panel appropriately representative of the public being
12 served by the BDRP. Appointments will be limited to keep the
13 Panel at an appropriate size and to ensure that the Panel is
14 comprised of individuals who have broadbased experience, superior
15 skills and qualifications from a variety of legal specialties and
16 other professions.

17 3.7 The Resolution Advocates on the Panel will indicate to
18 the court the city or cities within the district in which they
19 are willing to act or serve.

20 4.0 **ADMINISTRATION OF THE BDRP**

21 4.1 A judge of this court will be appointed by the Chief
22 Judge to serve as the BDRP Administrator. The BDRP Administrator
23 will be aided by a staff member of the court, who will maintain
24 and collect applications, maintain the roster of the Panel, track
25 and compile results of the BDRP, and handle such other
26 administrative duties as are necessary.

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1 5.0 **ASSIGNMENT TO DISPUTE RESOLUTION**

2 5.1 A contested matter in a case, adversary proceeding, or
3 other dispute (hereinafter collectively referred to as "Matter"
4 or "Matters") may be assigned to the BDRP by order of the judge
5 at a status conference or other hearing, or if requested in
6 writing by the parties. While participation in the BDRP is
7 intended to be voluntary, any judge, acting sua sponte or on the
8 request of a party, may designate specific Matters for inclusion
9 in the program. If a Matter is to be assigned to the BDRP, the
10 parties will be presented with the order assigning the Matter to
11 the BDRP, and with a current roster of the Panel. The parties
12 shall normally be given the opportunity to confer and designate a
13 mutually acceptable Resolution Advocate as well as an alternate
14 Resolution Advocate. If the parties cannot agree, or if the
15 judge deems selection by the court to be appropriate and
16 necessary, the judge shall select a Resolution Advocate. Nothing
17 contained in this General Order is intended to preclude other
18 forms of dispute resolution with consent of the parties and
19 approval of the court.

20 5.2 The order assigning a Matter to the BDRP shall be in
21 the form attached as Exhibit "B". The original shall be docketed
22 and retained in the case or adversary proceeding file and copies
23 shall be mailed by the party so designated by the judge to the
24 assigned Resolution Advocate, the alternate Resolution Advocate,
25 the BDRP Administrator's staff assistant and to all other parties
26 to the dispute. Assignment to the BDRP shall not alter or affect
27 any time limits, deadlines, scheduling matters or orders in any
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1 adversary proceeding, contested matter or other proceeding,
2 unless specifically ordered by the court.

3 5.3 No Resolution Advocate may serve in any Matter in
4 violation of the standards set forth in 28 U.S.C. §455. An
5 attorney Resolution Advocate shall also promptly determine all
6 conflicts or potential conflicts in the same manner as an
7 attorney would under the California Rules of Professional Conduct
8 if any party to the dispute were a client. A non-attorney
9 Resolution Advocate shall promptly determine all conflicts or
10 potential conflicts in the same manner as under the applicable
11 rules pertaining to the Resolution Advocate's profession. If the
12 Resolution Advocate's firm has represented one or more of the
13 parties, the Resolution Advocate shall promptly disclose that
14 circumstances to all parties in writing. A party who believes
15 that the assigned Resolution Advocate has a conflict of interest
16 shall promptly bring the matter to the attention of the
17 Resolution Advocate. If the Resolution Advocate does not
18 withdraw from the assignment, the matter shall be brought to the
19 attention of the court by the Resolution Advocate or any of the
20 parties.

21 **6.0 DISPUTE RESOLUTION PROCEDURES**

22 6.1 Within seven (7) calendar days of notification of
23 appointment, the Resolution Advocate shall: (a) give notice to
24 the parties of the time and place for the BDRP conference, which
25 conference shall commence not later than thirty (30) calendar
26 days following the date of appointment of the Resolution
27 Advocate, and which shall be held in a suitable neutral setting,
28 such as the office of the Resolution Advocate, at a location

1 convenient to the parties; or (b) if the Resolution Advocate is
2 not available to serve in the Matter, notify the parties, the
3 alternate Resolution Advocate, and the BDRP Administrator's staff
4 assistant of that unavailability. The alternate Resolution
5 Advocate shall thereafter serve as the Resolution Advocate. Upon
6 written stipulation between the Resolution Advocate and the
7 parties, the BDRP conference may be continued for a period not to
8 exceed 30 days.

9 6.2 Unless modified by the Resolution Advocate, no later
10 than fifteen (15) calendar days after the date of the order
11 assigning the Matter to the BDRP, each party shall submit
12 directly to the Resolution Advocate, and shall serve on all other
13 parties, a written BDRP statement. Notwithstanding the
14 foregoing, however, on the agreement of the parties, each written
15 BDRP Statement shall be confidential, shall not be served on any
16 other party, and shall be submitted only to the Resolution
17 Advocate, who shall keep it confidential. Such statements shall
18 not exceed fifteen (15) pages (not counting exhibits and
19 attachments). While such statements may include any information
20 that would be useful, they must:

21 a. Identify the person(s), in addition to counsel,
22 who will attend the session as representative of the party with
23 decision making authority;

24 b. Describe briefly the substance of the dispute;

25 c. Address whether there are legal or factual issues
26 whose early resolution might appreciably reduce the scope of the
27 dispute or contribute significantly to settlement;

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1 d. Identify the discovery that could contribute most
2 to equipping the parties for meaningful discussions;

3 e. Set forth the history of past settlement
4 discussions, including disclosure of prior and any presently
5 outstanding offers and demands;

6 f. Make an estimate of the cost and time to be
7 expended for further discovery, pretrial motions, expert
8 witnesses and trial; and

9 g. Indicate presently scheduled dates for further
10 status conferences, pretrial conferences, trial or otherwise.

11 6.3 Parties may identify in the BDRP statements persons
12 connected to a party opponent (including a representative of a
13 party opponent's insurance carrier) whose presence at the BDRP
14 conference would improve substantially the prospects for making
15 the session productive; the fact that a person has been so
16 identified, shall not, by itself, result in an order compelling
17 that person to attend the BDRP conference.

18 6.4 Parties shall attach to their written BDRP statements
19 copies of documents out of which the dispute has arisen, e.g.,
20 contracts, or those whose availability would materially advance
21 the purposes of the BDRP conference.

22 6.5 The written BDRP statements shall not be filed with the
23 court and the court shall not have access to them.

24 6.6 Counsel for each party who is primarily responsible for
25 the Matter (or the party, where proceeding in pro se) shall
26 personally attend the BDRP conference and any adjourned sessions
27 of that conference. Counsel for each party shall come prepared
28 to discuss all liability issues, all damage issues, and the

1 position of the party relative to settlement, in detail and in
2 good faith.

3 6.7 All individual parties, and representatives with
4 authority to negotiate and to settle the Matter on behalf of
5 parties other than individuals, shall personally attend the BDRP
6 conference unless excused by the Resolution Advocate for cause.
7 A party or lawyer who is excused from appearing in person at the
8 BDRP conference may be required to participate by telephone.

9 6.8 Willful failure to attend the BDRP conference and other
10 violations of this order shall be reported to the court by the
11 Resolution Advocate and may result in the imposition of sanctions
12 by the court.

13 6.9 All written and oral communications made in connection
14 with or during any BDRP conference, including the BDRP statement
15 referred to in paragraph 6.2, shall be subject to all the
16 protections afforded by Fed. R. Evid. 408 and by Fed. R. Bankr.
17 P. 7068.

18 No written or oral communication made by any party,
19 attorney, Resolution Advocate or other participant in connection
20 with or during any BDRP conference may be disclosed to anyone not
21 involved in the Matter. Nor may such communication be used in
22 any pending or future proceeding in this court to prove liability
23 for or invalidity of a claim or its amount. Such communication
24 may be disclosed, however, if all participants in the BDRP,
25 including the Resolution Advocate, so agree. Notwithstanding the
26 foregoing, this paragraph 6.9 does not require the exclusion of
27 any evidence:

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1 a. Otherwise discoverable merely because it is
2 presented in the course of a BDRP conference; or

3 b. Offered for another purpose, such as proving bias
4 or prejudice of a witness, negating a contention of undue
5 delay, or proving an effort to obstruct a criminal investigation
6 or prosecution.

7 Nothing in this paragraph shall be construed to prevent
8 parties, counsel or Resolution Advocates from responding in
9 absolute confidentiality, to inquiries or surveys by persons
10 authorized by this court to evaluate the BDRP. Nor shall
11 anything in this section be construed to prohibit parties from
12 entering into written agreements resolving some or all of the
13 Matter or entering or filing procedural or factual stipulations
14 based on suggestions or agreements made in connection with a BDRP
15 conference.

16 6.10 The court will accommodate parties who desire to place
17 any resolution of a Matter on the record during or following the
18 BDRP conference.

19 6.11 If the Resolution Advocate makes any oral or written
20 suggestions as to the advisability of a change in any party's
21 position with respect to settlement, the attorney for that party
22 shall promptly transmit that suggestion to the client.

23 6.12 The Resolution Advocate shall have no obligation to
24 make any written comments or recommendations, but may, as a
25 matter of discretion, provide the attorneys for the parties with
26 a written settlement recommendation memorandum. No copy of any
27 such memorandum shall be filed with the clerk or made available
28 in whole or in part, directly or indirectly, to the court.

1 6.13 The BDRP conference shall proceed informally. Rules of
2 evidence shall not apply. There shall be no formal examination
3 or cross-examination of witnesses. Where necessary, the
4 Resolution Advocate may conduct continued BDRP conferences after
5 the initial session. As appropriate, the Resolution Advocate
6 may:

7 a. Permit each party (through counsel or otherwise)
8 to make an oral presentation of its position;

9 b. Help the parties identify areas of agreement and,
10 where feasible, enter stipulations;

11 c. Assess the relative strengths and weaknesses of
12 the parties' contentions and evidence, and explain as carefully
13 as possible the reasoning of the Resolution Advocate that
14 supports these assessments;

15 d. Assist the parties, through separate consultation
16 or otherwise, in settling the dispute;

17 e. Estimate, where feasible, the likelihood of
18 liability and the dollar range of damages;

19 f. Help the parties devise a plan for sharing the
20 important information and/or conducting the key discovery that
21 will equip them as expeditiously as possible to participate in
22 meaningful settlement discussions or to posture the case for
23 disposition by other means; and

24 g. Determine whether some form of follow-up to the
25 conference would contribute to the case development process or to
26 settlement.

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1 7.0 PROCEDURE UPON COMPLETION OF DISPUTE RESOLUTION SESSION

2 7.1 Upon the conclusion of the BDRP conference, the
3 following procedure shall be followed:

4 a. If the parties have reached an agreement regarding
5 the disposition of the Matter, the parties, with the advice of
6 Resolution Advocate, shall determine who shall prepare the
7 writing to dispose of the Matter, and they may continue the BDRP
8 conference to a date convenient to all parties and the Resolution
9 Advocate if necessary. Where required by provisions of the
10 Bankruptcy Code or other applicable law, they shall promptly
11 submit the fully executed stipulation to the court for approval.
12 Where court approval is not required, the written agreement
13 disposing of the matter shall be enforceable pursuant to
14 applicable law.

15 b. The Resolution Advocate shall file with the court
16 and serve on the parties and the BDRP Administrator's staff
17 assistant, within ten (10) calendar days, a certificate in the
18 form attached as Exhibit "C" showing whether there has been
19 compliance with the BDRP conference requirements of this General
20 Order, and whether or not a settlement has been reached.
21 Regardless of the outcome of the BDRP conference, the Resolution
22 Advocate will not provide the court with any details of the
23 substance of the conference; and

24 c. In order to assist the BDRP Administrator in
25 compiling useful data to evaluate the BDRP, and to aid the court
26 in assessing the efforts of the members of the Panel, the
27 Resolution Advocate shall provide the BDRP Administrator's staff
28 assistant with an estimate of the number of hours spent in the

1 BDRP conference and otherwise on the matter, which report shall
2 be in the form attached as Exhibit "D".

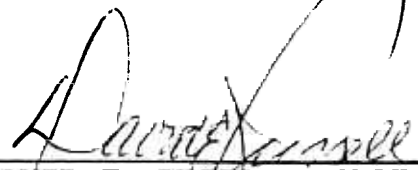
3 7.2 The Resolution Advocate will serve on a pro bono basis
4 and shall not require compensation or reimbursement of expenses.

5 **8.0 IMPLEMENTATION**


6 The BDRP shall become effective, and the term of the
7 Resolution Advocates will commence May 1, 1995. The BDRP shall
8 be available for all bankruptcy cases and related Matters filed
9 or pending on or after that date.

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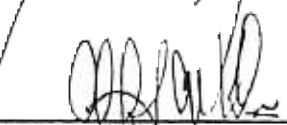
Dated: March 1, 1995



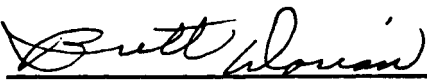
DAVID E. RUSSELL, CHIEF JUDGE



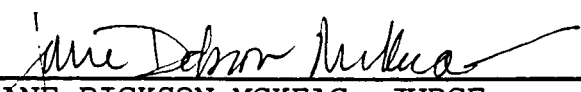
RICHARD F. FORD, JUDGE



CHRISTOPHER M. KLEIN, JUDGE



BRETT DORIAN, JUDGE



JANE DICKSON MCKEAG, JUDGE



MICHAEL S. MCMANUS, JUDGE

APPLICATION
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
BANKRUPTCY DISPUTE RESOLUTION PROGRAM PANEL

Name: _____

Office Address: _____

City State Zip

Office Phone: _____ Office Fax: _____

ATTORNEY APPLICANTS:

Dates of Admission:

California Bar: _____ (State Bar No. _____)

Eastern District of California: _____

Other Bars: _____

List three bankruptcy matters in which you have either:

- a. Served as the principal attorney of record (without regard to the party represented) from commencement to conclusion, or date of this application, whichever is earlier; or
- b. Served as attorney of record for a party-in-interest in an adversary proceeding or contested matter from commencement through completion (i.e., judgment, order or stipulation).

<u>Case Title</u>	<u>Case Number</u>	<u>Dates</u>	<u>Representation</u>
-------------------	--------------------	--------------	-----------------------

1.

2.

3.

OTHER APPLICANTS:

List any professional organization of which you are a member, and the length of your membership.

List any professional licenses you hold. Dates of admission.

List any bankruptcy experience reflecting the requirement that thirty percent (30%) of your practice is devoted to bankruptcy law or debtor/creditor rights during each of the five (5) years immediately preceding this application your resume may be attached.

FOR ALL APPLICANTS:

List any alternative dispute resolution training, which has qualified for continuing professional education credit or has been approved by a court of competent jurisdiction, that you have completed.

List any state or federal alternative dispute resolution programs in which you have participated and in what capacity.

List other relevant experience, skills, or other information you would like considered in connection with this application:

Cities in which you are willing and available to conduct resolution conferences:

_____	Redding	_____	Bakersfield
_____	Fresno	_____	Sacramento
_____	Modesto	_____	Other (Please specify)

I hereby certify that I meet the qualifications set forth in Section 3.4 of General Order No. 95-1, for membership to the Bankruptcy Dispute Resolution Program Panel. I am a member in good standing in the state and federal bar(s) listed above and that the foregoing is true and correct. I consent to disclosure of information contained in this application to parties and their representatives whose matters have been referred to the BDRP and to court personnel.

Dated: _____

Signature

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No.
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Debtor,)
_____)
)
)
Plaintiff,)
_____) Adversary No.
)
vs.)
)
)
Defendant.)
_____)

ORDER APPOINTING RESOLUTION ADVOCATE AND ASSIGNMENT
TO THE BANKRUPTCY DISPUTE RESOLUTION PROGRAM

This _____ is
(adversary proceeding) (name of dispute in main case)

hereby assigned to the Bankruptcy Dispute Resolution Program of
this district, and the following are appointed as Resolution
Advocate and Alternate Resolution Advocate:

Resolution Advocate:	Alternate:
_____	_____
Name	Name
_____	_____
Address	Address
_____	_____
City, State, Zip	City, State, Zip
_____	_____
Telephone	Telephone

The matter concerns:
() Dischargeability () Objection to Claim () Lien Avoidance
() Other: _____

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Special Instruction from the Court:

The attorneys for the parties are:

Attorney for _____: Attorney for _____:

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Telephone

Telephone

The parties are to comply with the provisions of General Order No. 95-1.

ORDER

IT IS SO ORDERED and counsel for _____ shall mail a copy of this order to the assigned Resolution Advocate, the Alternate Resolution Advocate, and all parties to the dispute and file a proof of such service within five (5) days from the date of this order.

Dated: _____

Judge, U.S. Bankruptcy Court

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No.
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)
 Debtor,) Adversary No.
 _____)
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)
 Plaintiff)
 _____)
 vs.)
)
)
 Defendant.)
 _____)

CERTIFICATE RE: BDRP CONFERENCE

1. I hereby certify that pursuant to an order of assignment by this Court to the Bankruptcy Dispute Resolution Program dated _____, a BDRP Conference was ___/was not__ held.

(If Applicable)
Date: _____
Continued Dated: _____

2. A settlement of this matter was ___/was not __ reached.

Dated: _____

Resolution Advocate

(Type or Print Name)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re:)	Case No.
)	
)	
Debtor,)	
_____)	
)	
)	
Plaintiff,)	
_____)	Adversary No.
)	
vs.)	
)	
Defendant.)	
_____)	

REPORT OF BDRP CONFERENCE

I, _____, Resolution Advocate for the Bankruptcy Dispute Resolution Program (BDRP), state:

1. A BDRP conference was held on _____ at _____ (attach attendance form(s)).
Continued Date: _____ at _____
(If applicable)
2. The Rules governing the conference were _____ were not _____ complied with. If not, how? _____
_____.
3. A settlement of this matter was ___ was not ___ reached.
4. If a settlement/resolution was reached, _____ (plaintiff/defendant/other) prepared the written stipulation for settlement.

5. Prior to the preparation of a final written agreement, the parties choose to put the agreement on the court record.

Yes _____ No _____

6. I spent _____ hours in preparing for and scheduling the conference(s).

7. I spent _____ hours attending the conference(s).

8. The dispute resolution procedure utilized was: (Check as many as applicable. If more than one is applicable, give the appropriate percentage of time spent on each.)

Early Neutral Evaluation _____

Settlement Negotiation _____

Mediation

9. Comments/Suggestions: _____

Dated: _____

Resolution Advocate

(Type or Print Name)

BDRP SESSION ATTENDANCE FORM

Case Name: _____

Case No.: _____

Adversary Proceeding Name: _____

Adversary Proceeding No.: _____

Date of Session: _____

Resolution Advocate: _____

Instructions: Please have **all attorneys and client representatives** who attend the conference(s) provide the following information. The purpose of this information is to facilitate survey research of the value of the BDRP.

ATTORNEYS

Name: _____ Name: _____

Firm Name: _____ Firm Name: _____

Address: _____ Address: _____

Phone: (____) _____ Phone: (____) _____

Attorney for: _____ Attorney for: _____

Name: _____ Name: _____

Firm Name: _____ Firm Name: _____

Address: _____ Address: _____

Phone: (____) _____ Phone: (____) _____

Attorney for: _____ Attorney for: _____

CLIENT REPRESENTATIVES

Name: _____ Name: _____

Title: _____ Title: _____

Organization: _____ Organization: _____

Address: _____ Address: _____

Phone: () _____ Phone: () _____

Party Representing: _____ Party Representing: _____

Name: _____ Name: _____

Title: _____ Title: _____

Organization: _____ Organization: _____

Address: _____ Address: _____

Phone: () _____ Phone: () _____

Party Representing: _____ Party Representing: _____