

**Local Rule 9019-2**  
**Mediation**

(a) *Certification of Mediators.* The Chief Judge shall certify as many mediators as the Chief Judge determines are necessary.

(b) *Application.* An application for certification as a mediator may be obtained from the Clerk. A properly completed application shall be submitted to the Clerk.

(c) *Eligibility to be a Court Certified Mediator.*

(1) Attorney Applicants. An attorney admitted to the bar of this court under L.B.R. 2090-1 may be certified as a mediator if the attorney has served as a mediator on a regular basis or completed mediation training and

(A) has been involved actively for at least 3 years as counsel of record in bankruptcy cases; or

(B) has been involved actively for at least 3 years as an academic or attorney in matters that involve legal or factual issues or business transactions that are the subject of litigation before this court.

(2) Non-Attorney Applicants. A person who is not an attorney may be certified as a mediator if the person

(A) has served as a mediator on a regular basis or completed mediation training; or

(B) has been involved actively for at least 3 years as a professional in bankruptcy cases or in matters that involve legal or factual issues or business transactions that are the subject of litigation before this court.

(d) *Register of Certified Mediators: Retention of Appointment Orders.* The Clerk shall maintain a Register of Certified Mediators; provide a copy of the Register on request; and maintain a record of each mediator's appointments.

(e) *Judicial Assignment of a Matter to Mediation and Appointment of a Mediator.*

(1) Assignment of a Matter to Mediation. The court,

- (A) on its own motion,
- (B) by approving a stipulation of the parties, or
- (C) on motion of a party

may assign any matter in the case for mediation, except that an adversary proceeding that has been designated under L.B.R. 9019-1 for compulsory arbitration may not be assigned to mediation unless the parties consent.

(2) Request for Appointment of Selected Mediator. The parties to a proposed mediation may file a stipulation requesting

- (A) the appointment of a mediator selected by the parties, and
- (B) approval of the terms for compensating the mediator and reimbursing the mediator's expenses.

(3) Appointment of a Certified Mediator Selected by Parties. Unless special circumstances exist, the court shall appoint a person who is on the Register of Certified Mediators and willing to serve as mediator if the person has been selected by the parties to be the mediator and that person has preliminarily determined that he or she is not disqualified from serving under subdivision (i) of this rule.

(4) Appointment of a Non-Certified Mediator Selected by the Parties. The court may, but need not, appoint a person who is not on the Register of Certified Mediators who is willing to serve as mediator if the person has been selected by the parties to be the mediator and that person has preliminarily determined that he or she is not disqualified under subdivision (i) of this rule.

(5) Appointment of Mediator Selected by the Court. The court shall appoint a mediator if the parties do not select a mediator or the mediator selected by the parties is not appointed by the court. The court or a person designated by the court may contact a potential appointee to determine whether the person is willing to serve as mediator and whether that person has preliminarily determined that he or she is not disqualified under subdivision (i) of this rule.

(f) *Notice of Appointment.*

The Clerk shall notify the mediator of the appointment.

(g) *Compensation and Reimbursement of Expenses.*

(1) Compensation of Mediator Absent Agreement of the Parties.

(A) A mediator who accepts an appointment volunteers the time expended to prepare for the mediation and to conduct a mediation conference or conferences lasting up to 4 hours, except as provided in paragraph (2) of this subdivision.

(B) After completion of 4 hours in a mediation conference or conferences, the mediator may either

(i) continue to volunteer the mediator's time; or

(ii) give the parties the option to agree to pay the mediator a reasonable hourly rate for additional time spent on the mediation.

(C) If the parties agree to compensate the mediator under subdivision (g)(1)(B)(ii), they shall each pay a pro rata share of the mediator's compensation, unless they agree to some other allocation or court approval of the payment of the mediator's fee is required under subdivision (g)(3).

(2) Agreement for Compensation of Mediator.

(A) Agreement. Subject to subdivision (g)(3), the parties may agree to pay the mediator reasonable compensation consisting of fees and reimbursement of expenses for the mediator's services.

(B) Stipulation. If the order assigning the matter for mediation or appointing a mediator did not approve the terms of the mediator's compensation or reimbursement of expenses, the parties to the mediation may file a stipulation for approval of the terms of the mediator's compensation or reimbursement of expenses.

(C) Sharing Obligation to Pay Mediator's Fee. The parties shall each pay a pro rata share of the mediator's compensation, unless they agree to some other allocation.

(3) Court Approval Required if Estate Is a Party. Unless the court orders otherwise in the order assigning a matter to mediation or appointing a mediator, court approval of the mediator's compensation shall be required if the estate is to be charged under paragraph (1)(C) or (2)(C) of this subdivision for all or part of the mediator's compensation and

(1) the amount of compensation payable by the estate

(i) exceeds \$3,000 in a chapter 7 or 13 case, or

(ii) exceeds \$5,000 in a chapter 11 case; or

(2) the estate's representative objects to the amount to be paid by the estate for the mediation.

(h) *Motion to Enforce Obligation to Pay Mediator*. A motion to enforce a party's obligation under subdivision (g)(1)(C) and (g)(2)(C) to compensate a mediator is governed by L.B.R. 9014-3.

(i) *Disqualification*.

(1) Mediator. Mediators shall be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall disqualify themselves from proceeding with any appointment when they would be required to disqualify themselves under 28 U.S.C. § 455 if they were a justice, judge, or magistrate judge.

(2) Mediator's Firm. A mediator's firm or employer is not automatically disqualified from employment as a professional in a case or from representing a party in the case solely because of the mediator's prior service in a case. If disclosure of information obtained by the mediator in the mediation would be harmful, an appropriate screening mechanism shall be established by the mediator's firm or employer to insure the mediator has no connection with the discharge by the firm or the employer of its responsibilities in the case.

(j) *Acceptance of Appointment*. Within 7 days of receiving an order of appointment, the mediator shall notify the Clerk that the appointment is accepted and that there is no ground for disqualification or that the mediator is disqualified.

(k) *Confidentiality*.

(1) Mediator. All information disclosed to the mediator during the mediation process is confidential. The mediator shall not divulge that information to either a party to the mediation or a third party without the consent of the party who disclosed the information.

(2) Mediation Communications Confidential and Privileged. Any written or oral communications to the mediator by a party or other participant, any statement of a party, an attorney, the mediator, or other participant in connection with the mediation, and a mediator's written or oral settlement recommendations are confidential and privileged and shall not be disclosed to third parties.

(3) Mediation Documents. Documents relating to the mediation, except the Mediation Report, shall not be filed with the court or delivered to the judge who assigned the matter to mediation. This paragraph does not apply to the reporting of or processing of a complaint about unlawful or unethical conduct during the mediation process.

(4) Discovery. Information that is otherwise discoverable in the pending litigation in the bankruptcy court does not become exempt from discovery by merely being used by a party in the mediation.

(5) Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

(6) Admissibility. Fed. R. Evid. 408, Compromise Offers and Negotiations, applies to the mediation communications.

(1) *Parties to the Mediation.* The court, on its own motion, or the mediator, with the consent of the parties to the mediation, may direct that additional parties participate in the mediation or be invited to participate in the mediation.

(m) *Scheduling Mediation Conference.*

(1) Notice. The mediator shall give notice to the parties of the date, time, and location of the initial mediation conference at least 14 days before the date of the initial mediation conference.

(2) Date and Time. The date of the initial mediation conference shall be no later than 30 days after the mediator is notified of the appointment. The mediator shall select the date and time of the initial mediation conference and all other mediation activities.

(3) Continuance. The mediator may continue the initial conference to a date that is no later than 60 days after the mediator is notified of the appointment if the mediator finds that exceptional circumstances prevent holding the initial conference on the original date or fairness to the parties justifies a continuance. If the initial conference is continued to a later date, the mediator shall notify the appointing judge.

(4) Location. The initial mediation conference and any additional conferences may be held at any location mutually agreed to by the parties and the mediator. If the parties and the mediator cannot agree upon a location for the mediation conferences, the conferences shall be held in the courthouse where the appointing judge regularly sits.

(5) Additional Conferences. The mediator, with the consent of the parties, may schedule additional mediation conferences.

(n) *Mediation Procedure.*

(1) No Automatic Continuance of Matters Assigned to Mediation. A trial or hearing will not be continued to accommodate a mediation unless the court orders otherwise.

(2) Mediation Memorandum.

(A) Unless the mediator otherwise directs, not later than 3 days before the initial mediation conference, each party shall provide to the mediator, but not to the other parties, a mediation memorandum no longer than 2 pages, summarizing the nature of the matter and the party's positions on (1) the major factual and legal issues affecting liability, (2) the relief sought by each party and (3) settlement.

(B) Once a party's memorandum has been provided to the mediator, unless that party consents, the mediator may not direct the party to provide the memorandum to another party.

(3) Attendance of Counsel at Mediation Conference. An attorney who is responsible for the representation of a party shall attend the initial mediation conference and any additional mediation conferences. Local counsel for an attorney attending a conference does not have to appear. Each attorney shall be prepared to discuss in good faith the following:

(A) all liability issues;

(B) all damage issues; and

(C) the client's position on settlement.

(4) Attendance of Parties at Mediation Conference. If an individual or any other entity that is a party to a mediation resides within or has its principal place of business located within the Eastern District of Pennsylvania, the individual shall attend the mediation conference in person and any other entity shall have a person with decision making authority for it attend the mediation conference. All other individuals or entities that are parties to the mediation must be available by

telephone and the person available by telephone must have decision making authority. The mediator for cause may excuse attendance completely or authorize participation by telephone.

(5) No Recording of Mediation Conference. A mediation conference shall not be recorded by any means.

(6) Conclusion of Mediation. The mediator shall file a Mediation Report on the form provided by the Clerk within 14 days of the conclusion of the mediation. If the mediation results in an agreement for the resolution of the matter, the parties shall determine which of them will prepare the stipulation of settlement, have the stipulation of settlement executed, and file the requisite motion for court approval. A motion for court approval shall be filed no later than 30 days after the conclusion of the mediation or within such additional time as the court shall direct.

(7) Sanctions. Willful failure of an attorney or a party to comply with paragraphs (3), (4), or (5) of this subdivision or subdivision (k) may result in imposition of appropriate sanctions.