

Local Rule 9019-3

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 may be submitted to the clerk.

(c) *Selection Criteria.*

(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 (I) has served as a mediator on a regular basis or participated in or is willing to participate in formal mediation training and (ii) has been involved actively for at least 3 years

(A) as counsel of

record in bankruptcy cases either for the debtor, debtor in possession, trustee, or
creditors' committee, or for a party to adversary proceedings or contested matters; or

(B) as an academic or practicing 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 (I) has served as a mediator on a regular basis or participated in or is willing to participate in formal mediation training and (ii) has been involved actively for at least three (3) years

(A) as a professional in bankruptcy cases; or

(B) as a participant or a professional 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 and provide a copy of the Register on request. Orders appointing mediators shall be retained by the clerk and the clerk shall maintain a record of each mediator's appointments.

(e) *Orders Appointing a Mediator.* Any matter arising in a case, other than an adversary proceeding subject to compulsory arbitration under L.B.R. 9019-2, may be assigned for mediation. The court, on its own motion, or on the request of a party may assign a matter for mediation. If the court determines a matter will be assigned for mediation, the court, after consultation with the parties, shall appoint a mediator from the Register of Certified Mediators. The clerk shall mail promptly a copy of the order to the mediator.

(f) *Compensation.* 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 four (4) hours. After completion of four (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 \$150 per hour for additional time spent on the mediation. The parties shall each pay a pro rata share of the mediator's compensation, unless they agree to some other allocation of the obligation to pay the fee. A motion to enforce a party's obligation under this subdivision to compensate a mediator is governed by L.B.R. 9014-3.

(g) *Disqualification to Serve as 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. Within 7 days of receiving an order of appointment the mediator shall notify the clerk that the appointment is accepted and there is no ground for disqualification or that mediator is disqualified.

(h) *Confidentiality: Service of Mediator's Law Firm.* A mediator shall treat all information obtained during the mediation process as confidential. A mediator's law firm 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 the mediator's law firm is employed as a professional in a case or undertakes representation of a party in the case and disclosure of information obtained by the mediator in the mediation would be harmful, an appropriate screening mechanism shall be established by the mediator's law firm to insure the mediator has no connection with the law firm's discharge of its responsibilities in the case.

(i) *Parties to the Mediation.* On the request of the mediator or on the court's own motion, the court may direct that additional parties participate in the mediation or be invited to participate in the mediation.

(j) *Scheduling Mediation Conference.*

(1) Authority of Mediator. The mediator shall select the date, time, and, subject to subdivision (j)(2), the location of the initial mediation conference and all other mediation activities.

(2) Location. Promptly after the entry of an order appointing a mediator, the clerk shall advise the mediator of the dates and times mediation facilities are available at the courthouse. The initial mediation conference and any additional conferences shall be held in the courthouse unless the mediator determines that it is in the interest of the mediator and the parties to hold the conference at another location designated by the mediator.

(3) Date. The date of the initial mediation conference shall be no later than 30 days after the mediator is notified of the appointment.

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

(5) 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 parties consent and 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 judge who entered the appointment order.

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

(k) *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 parties consent to the continuance and the court so directs.

(2) Mediation Memorandum. Not later than 3 days before the initial mediation conference, each party shall deliver or telecopy to the mediator and to each other party a mediation conference 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. Mediation memoranda are solely for use in the mediation process and shall not be filed.

(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:

- (i) all liability issues;
- (ii) all damage issues; and
- (iii) 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) Sanctions. Willful failure of an attorney or a party to comply with subdivisions (k)(3) or (k)(4) shall be reported to the judge who entered the appointment order and may result in imposition of appropriate sanctions.

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

(7) 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 28 days after the conclusion of the mediation.

(8) Confidentiality of Mediation: No Use at Trial or Otherwise. A Mediation Submission, a mediator's written settlement recommendation memorandum or any oral suggestions relating to settlement, and any statement of a party, an attorney, the mediator, or other participant is confidential and privileged and shall not be disclosed to third parties. F.R.E. 408 applies to mediation under this rule and no statement made during the mediation process or writing used during the mediation process shall be offered or admissible as evidence in any trial or hearing, made known to the court or jury, or construed for any purpose as an admission. Papers relating to the mediation, except the Mediation Report, shall not be filed or delivered to a judge of the court. This subdivision does not apply to the reporting of or processing of complaints about unlawful or unethical conduct during the mediation process.