

**Rule 9019-2**  
**MEDIATED SETTLEMENT CONFERENCE**

The court may require parties and their representatives to attend a pretrial mediated settlement conference in any adversary proceeding or contested matter pending in the court.

Rule 9019-2(1)  
**MEDIATED SETTLEMENT ORDER AND MOTIONS**

- (a) **TIMING OF THE ORDER.** The court may issue the order at any time.
- (b) **CONTENT OF ORDER.** The court's order shall:
- (1) require that a mediated settlement conference be held in the case;
  - (2) establish a deadline for the completion of the conference;
  - (3) state clearly that the parties have the right to select their own mediator as provided by Local Bankruptcy Rule 9019-2(2);
  - (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Local Bankruptcy Rule 9019-2(2); and
  - (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court.
- (c) **MOTION TO DISPENSE WITH MEDIATED SETTLEMENT CONFERENCE.** A party may move the court, within 14 days after entry of the court's order, to dispense with the conference. The motion shall state the reasons the relief is sought. Any party may file a written objection specifically stating the reasons for opposing the motion.
- (d) **MOTION FOR COURT ORDERED MEDIATED SETTLEMENT CONFERENCE.** In cases not ordered to mediated settlement conference, any party may move the court to order such a conference. The motion shall state the reasons why the order should be allowed. Objections may be filed in writing with the court within 14 days after the date of the service of the motion.
- (e) **MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** The mediated settlement conference shall not delay other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the court.

Rule 9019-2(2)  
**SELECTION OF MEDIATOR**

- (a) **SELECTION OF MEDIATOR BY AGREEMENT OF PARTIES.** The parties appearing of record may select a mediator. The plaintiff (or movant in a contested matter) shall file with the court a notice indicating the selection of a mediator by agreement within 14 days of the court's order. This notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the

mediator; and state that the mediator and the parties have agreed upon the selection and rate of compensation.

(b) APPOINTMENT OF MEDIATOR BY THE COURT. If the parties cannot agree upon the selection of a mediator, the plaintiff (or movant in a contested matter) shall submit a motion for court appointment of mediator. The motion must be filed within 14 days after the court's order requiring mediation and shall state that the parties and their attorneys discussed the selection of a mediator and are unable to agree.

(c) DISQUALIFICATION OF MEDIATOR. Any party may move for an order disqualifying the mediator. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to this rule. Nothing in this provision shall preclude mediators from disqualifying themselves upon written notice to the court and the parties.

#### Rule 9019-2(3)

##### MEDIATED SETTLEMENT CONFERENCE LOCATION AND TIME

(a) LOCATION OF CONFERENCE. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the United States Bankruptcy Courthouse or other public or community building in the Eastern District. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

(b) TIME OF CONFERENCE. The court's order issued pursuant to Local Bankruptcy Rule 9019-2(1) shall state a date of completion for the conference. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.

(c) REQUEST TO EXTEND DATE OF COMPLETION. A party, or the mediator, may request the judge to extend the deadline for completion of the conference. The request shall state the reasons the continuance is sought and shall be served by the movant upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the judge. The judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to trial. The order shall be served on all parties and on the mediator by the person who sought the extension.

(d) RECESSES. The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

#### Rule 9019-2(4)

##### DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) ATTENDANCE. The following persons shall physically attend the entire mediated

settlement conference until an agreement is reduced to writing and signed as provided by subsection (c) of this rule or an impasse has been declared, unless excused by the court or by the mediator with approval of all parties and attorneys.

(1) PARTIES.

(A) all individual parties;

(B) any party that is not a natural person or a governmental entity, represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action; and

(c) any party that is a governmental entity, represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.

(2) INSURANCE COMPANY REPRESENTATIVES. A representative of each insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have decision-making authority.

(3) ATTORNEYS. At least one counsel of record for each party or other participant whose counsel has appeared in the action.

(b) NOTIFYING LIEN HOLDERS. Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify the lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request the lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.

(c) FINALIZING AGREEMENT. Upon reaching agreement, either before or during the mediation conference, the settlement shall be immediately reduced to writing and signed by the parties, their counsel, and others with settlement authority.

(d) PAYMENT OF COMPENSATION BY PARTIES. Unless otherwise agreed to by the parties or ordered by the court, costs of the mediated settlement conference shall be paid in equal shares by the parties. Multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally unless the court otherwise orders.

Rule 9019-2(5)

**SANCTIONS FOR FAILURE TO ATTEND**

(a) If any person required to attend the conference pursuant to Local Bankruptcy Rule 9019-2(4) fails to attend without good cause, the court may impose an appropriate monetary sanction, including but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and losses of earnings incurred by persons attending the conference.

(b) A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought.

Rule 9019-2(6)

**AUTHORITY AND DUTIES OF MEDIATOR**

(a) **AUTHORITY OF MEDIATOR.**

(1) **CONTROL OF CONFERENCE.** The mediator shall at all times be in control of the conference and the procedures to be followed.

(2) **PRIVATE CONSULTATION.** The mediator may meet and consult privately with any participant or counsel during the conference.

(3) **SCHEDULING THE CONFERENCE.** The mediator shall make a good faith effort to schedule the conference at a time that is convenient to the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) **DUTIES OF MEDIATOR.**

(1) **GENERALLY.** The mediator shall define and describe the following to the parties at the beginning of the conference:

(A) the process of mediation;

(B) the differences between mediation and other forms of conflict resolution;

(c) the costs of the mediated settlement conference;

(D) that the mediated settlement conference is not a trial, the mediator is not a court, and the parties retain their right to trial if they do not reach settlement;

(E) the circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

(F) whether and under what conditions communications with the mediator will be held in confidence during the conference;

(G) the inadmissibility of conduct and settlements as provided by applicable Rules of Evidence.

(H) the duties and responsibilities of the mediator and the participants; and

(I) the fact that any agreement reached will be reached by mutual consent.

(2) **DISCLOSURE.** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.

(3) **DECLARING IMPASSE.** It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.

(4) **LOCATION OF CONFERENCE.** Unless all parties agree, the mediated settlement conference shall be held at a place selected by the mediator. The mediator shall be responsible for reserving a place and making arrangements for the conference and

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for giving timely notice of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

(5) REPORTING RESULTS OF CONFERENCE. The mediator shall submit a Report of Mediator to the court which indicates the results of the conference. This report shall be filed within two weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first.

(A) If an agreement was reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file the consent judgment or dismissals. The mediator's report shall inform the court of the absence of any party, attorney, or insurance representative who was absent without permission from the conference.

(B) Unless confidential, the mediator shall attach the written settlement agreement prepared by the parties to the Report of Mediator.