

D.N.J. LBR 9019-2 ALTERNATIVE DISPUTE RESOLUTION (ADR)

(a) Register of Mediators.

1. The clerk shall maintain a register of eligible individuals who wish to serve as mediators.
2. An individual may be eligible for appointment to the register upon the filing of an application for appointment to the register demonstrating the qualifications of the individual as mediator and satisfactory completion of such training as may be required from time to time by the Court.
3. The register of eligible mediators shall be reviewed and approved by the Court periodically and shall be posted by the clerk in each vicinage.

(b) Compensation of Mediators.

1. Mediators shall be compensated at the rate two hundred (\$200) dollars per hour, unless otherwise ordered by the Court.
2. In the event that the parties to mediation and the mediator agree on an hourly rate in excess of or less than two hundred dollars (\$200), the order of referral for mediation shall indicate the agreed hourly rate of the mediator, if in the opinion of the Court such rate is reasonable.
3. The parties shall share the charges of the mediator equally, unless otherwise provided in the order allowing the mediator's compensation.
4. A mediator seeking compensation shall comply with the requirements of **D.N.J. LBR 2016-1(a)**.
5. A copy of the mediator's application for compensation shall be served on each party to the mediation.

(c) Referral to Mediation.

1. An adversary proceeding or contested matter may be referred to mediation either by joint request of the parties or by the Court at a status conference or other hearing.
2. Where the parties consent to mediation, they shall file an **application** and **consent order**, as allowed by **D.N.J. LBR 9013-1(j)**, requesting referral to mediation and designating a mutually acceptable mediator and alternate selected from the current register. If the parties are unable to agree on a mediator and alternate, the application shall request selection by the Court from the current register.
3. Where mediation is directed by the Court, on its own motion, the parties shall confer and attempt to designate a mutually acceptable mediator and alternate from the current register. If the parties cannot agree, the Court shall appoint a mediator and alternate.

(d) Mediation Procedure.

- (1) Conflicts.* Within 7 days of the filing of the referral order, the mediator shall determine whether he or she is disqualified. Disqualification shall include, but not be limited to, acting as trustee in the case or in the case of an insider or affiliate of the debtor. If the mediator determines that he or she is disqualified, the mediator shall promptly file a

notice of disqualification, serving copies on the parties and the alternate, and the alternate shall become the mediator.

- (2) *Time and Place.* The mediator shall fix a time and place for the mediation conferences which are reasonably convenient for the parties and shall serve written notice of the initial conference at least 14 days before the return date. The conference shall be commenced as early as practicable, and in any event not more than 45 days following the entry of the referral order. Upon consent of all parties, the mediator may adjourn the conference and inform the Court, in writing, of the need for adjournment and the new date(s).
- (3) *Information Statement.* Each party shall prepare an information statement which shall contain the following:
 - (A) A copy of the pleading setting forth the party's cause of action or defense;
 - (B) A list of all witnesses upon which the party would rely at trial, and a summary of their expected testimony;
 - (C) Copies of the principal exhibits upon which the party would rely at trial; and
 - (D) A statement, not exceeding 3 pages, of the principal rules of law upon which the party relies.

Where an exhibit is voluminous, a *summary* may be provided. The submission of a *summary* of expected testimony shall constitute a certification by the attorney that he or she, or other counsel of record for the party, has personally spoken with the witness or has reviewed a written statement of the witness, deposition transcript, or interrogatory answers signed by the witness, and believes in good faith that the witness will testify substantially in conformity with the *summary*.

The information statement shall be served on the mediator and all parties at least 7 days before the initial conference. The information statement shall not be filed, shall not be construed as a pleading, shall not satisfy any discovery obligation, and shall not limit the evidence the parties may use at trial, if mediation does not result in settlement. No responsive or supplemental statements shall be permitted.

- (4) *Attendance by Attorneys.* The attorney with primary responsibility for representation in the proceeding or matter to be mediated shall personally attend the conference(s). Attorneys shall be prepared to discuss in detail and in good faith the following:
 - (A) All liability issues;
 - (B) All damages issues; and
 - (C) Authorized parameters for settlement.
- (5) *Attendance by Parties.* An individual party who resides within the vicinage of the case shall personally attend the mediation conference(s) unless excused by the mediator for cause. A party, other than an individual, whose principal place of business is located in the vicinage of the case shall attend the mediation conference(s) through a representative with authority to negotiate. All other parties shall be available for consultation with their attorneys and the mediator by telephone.

- (6) *Caucus*. The mediator shall decide which parties and/or attorneys shall be present, and the nature of any caucus sessions.
 - (7) *Failure to Attend*. A party's willful failure to attend the mediation conference(s) shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.
 - (8) *Privilege*. All proceedings or writings of the mediation conference, including the information statement, mediator's settlement recommendation, and any statement made by any party, attorney or other participant, shall in all respects be privileged and not reported, recorded, placed in evidence, communicated to the Court or jury, where applicable, or construed for any purpose as an admission against interest.
 - (9) *Settlement Recommendations*. The mediator may, but need not, make oral or written recommendations for settlement. Attorneys shall confer with their parties to review the mediator's recommendations and to determine whether a consent order or stipulation may be entered disposing of the adversary proceeding or contested matter or resolving as many issues as possible.
- (e) **Completion of Mediation**. Upon completion of the mediation conference(s), the mediator shall inform the Court, **in writing**, whether the parties have reached agreement to settle the adversary proceeding or contested matter. If settlement has been reached, the mediator shall direct the preparation of a consent order or stipulation containing the terms of settlement, which shall be filed.

1997 Comment: Formerly Local Rule 17.

2002 Comment: Subsections (b)(1) and (b)(2) of this rule were amended. The amendments increased the mediators hourly rate of compensation from one hundred and fifty (\$150) to two hundred dollars (\$200) per hour.

Dec., 2009 Comment This Rule is amended to conform with the March 26, 2009, Supreme Court approval of changes to Bankruptcy Rule 9006 which addresses the method by which time is calculated. On May 7, 2009, the Statutory Time Period Technical Amendments Act of 2009 was enacted (Pub. L. No. 111-06). The law adjusts the time period in 28 statutes, including nine sections of the Bankruptcy Code, which are impacted by the federal rule changes. Both the statutory and rules changes take effect on the same day, December 1, 2009. Deadlines of less than 30 days have been changed to multiples of seven days so that the expiration of the deadline ordinarily would occur on a weekday. Under the revised rules: 5 day deadlines become 7 days; 10 and 15 day deadlines become 14 days; 20 day deadlines become 21 days; and 25 day deadlines become 28 days. Effective, December 1, 2009 conforming amendments to the Court's Local Rules, including the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at www.uscourts.gov/rules and www.njb.uscourts.gov.