

D.N.J. LBR 9019-2 – Mediation Procedures.

(a) Referral to Mediation.

(1) Except as provided under subsections (a)(2) and (3) of this rule, every adversary proceeding shall be referred to mediation after the filing of the initial answer to the adversary complaint. Any contested matter may also be referred to mediation either by joint request of the parties or by the Court at a status conference or other hearing.

(2) An adversary proceedings shall not be presumptively referred to mediation if:

- (A) One or more parties is self-represented;
- (B) A party seeks a temporary restraining order or preliminary injunction, or
- (C) The action is initiated by the Office of the United States Trustee.

An adversary proceeding identified in (2)(A), (B) or (C) above may be referred to mediation by the request of any party, on written notice of the request to the other parties and with the Court's approval, or by the Court on its own motion at a status conference or other hearing.

(3) Where an adversary proceeding is presumptively referred to mediation, and a party seeks to be excused from mediation participation, or seeks a determination from the Court that the mediation should not proceed, the party may file a motion pursuant to D.N.J. LBR 9013-1 seeking that relief, or notify all parties to the adversary proceeding and the Court, at least seven days prior to the pretrial conference to be held pursuant to D.N.J. LBR 7016-1, that an objection to mediation will be raised at the hearing.

(4) Where the parties do not contest the referral of the adversary proceeding to mediation, they must file the Court's Form *Joint Mediation Order* at least three days prior to the scheduled pretrial conference. The *Joint Mediation Order* must be filed in addition to the Court's Form *Joint Order Scheduling Pretrial Proceedings and Trial*. If both orders are timely filed, the parties need not appear at the pretrial conference.

(5) The *Joint Mediation Order* shall contain the following:

- (A) The selection of a mediator, or an indication that the parties could not agree, leaving the Court to select a mediator;
- (B) That the mediation shall be completed in 60 days, unless a request for extension of time is granted by the Court;
- (C) That unless the Court orders otherwise, discovery in the matter shall be stayed, but mandatory disclosures under Fed.R.Civ.P. 26(a) shall proceed.

(b) Selection of Mediator.

(1) The parties shall confer regarding the selection of a mediator. Where the parties are submitting a *Joint Mediation Order* and have agreed on a mediator, the designation of the selected mediator shall be noted in the Order. In the event the Court overrules an objection to mediation, the parties will have 14 days following the pretrial conference to submit a *Joint Mediation Order*. If the parties cannot agree on a mediator or fail to timely submit a *Joint Mediation Order*, the Court will enter an *Order Referring Matter to Mediation and Designating Mediator*.

(2) The court may designate and the parties may select individuals who may, but need not be, on the Court's Register of Mediators.

(c) Disclosure by Mediator.

(1) Disclosure. Promptly after receiving notice of appointment, the mediator must make an inquiry sufficient to determine whether there is a basis for disqualification, or whether the mediator is unable to serve for any other reason. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorneys and by the applicable rules pertaining to the profession of the mediator. Within five (5) days after receiving notice of appointment, the mediator must file with the Court and serve on the parties either (1) a statement accepting the appointment and disclosing, to the best of the mediator's knowledge, all of the mediator's connections with the parties and their professionals, together with a statement that the mediator believes that there is no basis for disqualification, or (2) a notice of withdrawal.

(2) Objection Based on Conflict of Interest. A party to the mediation who believes that the assigned mediator has a conflict of interest or other basis for disqualification must promptly bring the issue to the attention of the mediator, as applicable, and to the other parties. If the mediator does not withdraw, and the movant is dissatisfied with the mediator's decision, the issue must be brought to the attention of the Court for resolution.

(d) Mediation Period. Mediation shall commence within sixty (60) days after the entry of an order assigning a matter to mediation. Parties may seek an extension of time to conduct the mediation by Consent Order, or by motion, after notice and hearing.

(e) Effect of Mediation on Discovery. Unless otherwise ordered by the Court, the assignment to mediation shall act to stay discovery, but will not stay the mandatory disclosures required under Fed.R.Civ.P. 26(a). Any party may seek to proceed with discovery or to stay Rule 26(a) disclosures by motion, and the Court, after notice and hearing, may enter appropriate orders.

(f) Informal Mediation Discussions. Following the filing of the statement accepting the appointment, the mediator shall hold an organizational telephone conference. The Mediator shall be entitled to confer with any or all counsel and pro se parties prior to, during or after the commencement of the mediation session. Such discussions may include all matters which the mediator believes will be beneficial to the mediation process or the conduct of the mediation, and shall be subject to the confidentiality requirements of this Rule.

(g) Mediation Statement. The mediator shall fix a date for the exchange by the parties and service upon the mediator of a brief statement of facts, applicable law and proposals for settlement, not exceeding fifteen pages. The Mediation Statement shall contain the following:

- (1) any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to settlement;
- (2) the history of any prior settlement discussions, including disclosure of prior and any presently outstanding offers and demands, and
- (3) an estimate of the cost and time to be expended for further discovery, pretrial motions and trial.

At the discretion of the parties, each party's mediation statement may be prepared and submitted to the mediator for review without service of the statement on other parties. All documents prepared for mediation shall be subject to the confidentiality requirements of this rule. Mediation statements must not be filed with the Court.

(h) Attendance at Mediation Session.

(1) Persons Required to Attend. Unless excused by the mediator or the Court upon a showing of good cause or hardship, or if the mediator or the Court determines that it is consistent with the goals of the mediation to excuse a particular person from attending, the following persons must attend the mediation session personally:

- (A) Each party that is a natural person;
- (B) If the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who either has full authority to negotiate and settle the matter on behalf of the party, or has authority to recommend a settlement and has prompt access to any board or governmental body whose approval is required to settle the matter;
- (C) The attorney who has primary responsibility for each party's case, and
- (D) Other interested parties, such as insurers or indemnitors, whose presence is necessary or beneficial to reaching a full resolution of the matter.

(i) Failure to Attend. Willful failure to attend any mediation session may be reported to the Court by the mediator or any other party, and may result in the imposition of sanctions by the Court.

(j) Confidentiality of Mediation Proceedings.

(1) Unless all of the participants in a mediation, including the mediator, agree otherwise in writing, or to the extent disclosure is permitted by this rule or applicable statute, no party, mediator, or other participant in a mediation shall disclose any mediation communication (including any document, report or other writing presented or used solely in connection with the mediation) to anyone who was not a participant in the mediation.

(2) A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm.

(3) A lawyer representing a client at a mediation session shall be governed by the provisions of the Rules of Professional Conduct.

(k) Evidentiary Privilege. A mediation communication, whether written or verbal, is not subject to discovery or admissible in evidence in any subsequent proceeding. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

(l) 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 communication.

(m) Procedure Following Mediation. Within seven (7) days after the mediator determines that the mediation is concluded, the mediator must report to the Court in writing whether the matter or any severable claim therein has been settled. If an agreement between the parties is reached, the agreement must be evidenced by a written document recording the agreement that is signed by all of the parties or their legal representatives. If the matter is not resolved, a pretrial conference shall be scheduled within thirty (30) days. If a joint scheduling order is filed by the parties, no appearance at the pretrial conference will be required.