

Rule 9019-2 Mediator and Arbitrator Qualifications and Compensation.

- (a) Register of Mediators and Arbitrators/ADR Program Administrator. The Clerk shall establish and maintain a register of persons (the "Register of Mediators") qualified under this Local Rule and designated by the Court to serve as mediators or arbitrators in the Mediation or Voluntary Arbitration Program. The Chief Bankruptcy Judge shall appoint a Judge of this Court, the Clerk or a person qualified under this Local Rule who is a member in good standing of the Bar of the State of Delaware to serve as the Alternative Dispute Resolution ("ADR") Program Administrator. Aided by a staff member of the Court, the ADR Program Administrator shall receive applications for designation to the Register, maintain the Register, track and compile reports on the ADR Program and otherwise administer the program.
- (b) Application and Certification.
- (i) Application and Qualifications. Each applicant shall submit to the ADR Program Administrator a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be designated to the Register. The applicant shall submit the statement substantially in compliance with Local Form 110A. The statement also shall set forth whether the applicant has been removed from any professional organization, or has resigned from any professional organization while an investigation into allegations of professional misconduct was pending and the circumstances of such removal or resignation. This statement shall constitute an application for designation to the ADR Program. Each applicant shall certify that the applicant has completed appropriate mediation or arbitration training or has sufficient experience in the mediation or arbitration process. Each applicant hereunder shall agree to accept at least one pro bono appointment per year. If after serving in a pro bono capacity insufficient matters exist to allow for compensation, credit for pro bono service shall be carried into subsequent years in order to qualify the mediator to receive compensation for providing service as a mediator or arbitrator.

- (ii) Court Certification. The Court in its sole and absolute determination on any feasible basis shall grant or deny any application submitted under this Local Rule. If the Court grants the application, the applicant's name shall be added to the Register, subject to removal under these Local Rules.
 - (iii) Reaffirmation of Qualifications. Each applicant accepted for designation to the Register shall reaffirm annually the continued existence and accuracy of the qualifications, statements and representations made in the application.
- (c) Oath. Before serving as a mediator or arbitrator, each person designated as a mediator or arbitrator shall take the following oath or affirmation:
- "I, _____, do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent upon me in the Mediation or Voluntary Arbitration Program of the United States Bankruptcy Court for the District of Delaware without respect to persons and will do so equally and with respect."
- (d) Removal from Register. A person shall be removed from the Register either at the person's request or by Court order entered on the sole and absolute determination of the Court. If removed by Court order, the person shall be eligible to file an application for reinstatement after one year.
 - (e) Appointment.
 - (i) Selection. Upon assignment of a matter to mediation or arbitration in accordance with these Local Rules and unless special circumstances exist as determined by the Court, the parties shall select a mediator or arbitrator. If the parties fail to make such selection within the time frame as set by the Court, then the Court shall appoint a mediator or arbitrator. A mediator shall be selected from the Register of Mediators, unless the parties stipulate and agree to a mediator not on the Register of Mediators.
 - (ii) Inability to Serve. If the mediator or arbitrator is unable to or elects not to serve, he or she shall file and serve on all parties, and on the ADR

Program Administrator, within seven (7) days after receipt of notice of appointment, a notice of inability to accept the appointment. In such event, the parties shall select an alternate mediator or arbitrator.

(iii) Disqualification.

- (A) Disqualifying Events. Any person selected as a mediator or arbitrator may be disqualified for bias or prejudice in the same manner that a Judge may be disqualified under 28 U.S.C. § 44. Any person selected as a mediator or arbitrator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a Judge.
- (B) Disclosure. Promptly after receiving notice of appointment, the mediator or arbitrator shall make an inquiry sufficient to determine whether there is a basis for disqualification under this Local Rule. 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 or arbitrator. Within seven (7) days after receiving notice of appointment, the mediator or arbitrator shall file with the Court and serve on the parties either (1) a statement that there is no basis for disqualification and that the mediator or arbitrator has no actual or potential conflict of interest or (2) a notice of withdrawal.
- (C) Objection Based on Conflict of Interest. A party to the mediation or arbitration who believes that the assigned mediator or arbitrator has a conflict of interest promptly shall bring the issue to the attention of the mediator or arbitrator, as applicable, and to the other parties. If the mediator or arbitrator does not withdraw, and the movant is dissatisfied with this decision, the issue shall be brought to the attention of the ADR Program Administrator by the mediator, arbitrator or any of the parties. If the

movant is dissatisfied with the decision of the ADR Program Administrator, the issue shall be brought to the Court's attention by the ADR Program Administrator or any party. The Court shall take such action as it deems necessary or appropriate to resolve the alleged conflict of interest.

- (iv) Liability. Aside from proof of actual fraud or unethical conduct, there shall be no liability on the part of, and no cause of action shall arise against, any person who is appointed as a mediator or arbitrator under these Local Rules on account of any act or omission in the course and scope of such person's duties as a mediator or arbitrator.

- (f) Compensation. A person will be eligible to be a paid mediator [or] arbitrator if that person has been admitted to the Register of Mediators maintained by the Court or otherwise has been appointed by the Court. Once eligible to serve as a mediator or arbitrator for compensation, which shall be at reasonable rates and subject to judicial review, the mediator or arbitrator may require compensation or reimbursement of expenses as agreed by the parties. If the mediator or arbitrator consents to serve without compensation and at the conclusion of the first full day of the mediation conference or arbitration proceeding it is determined by the mediator or arbitrator and the parties that additional time will be both necessary and productive in order to complete the mediation or arbitration, then:
 - (i) If the mediator or arbitrator consents to continue to serve without compensation, the parties may agree to continue the mediation conference or arbitration.
 - (ii) If the mediator or arbitrator does not consent to continue to serve without compensation, the fees and expenses shall be on such terms as are satisfactory to the mediator or arbitrator and the parties, subject to Court approval. Where the parties have agreed to pay such fees and expenses, the parties shall share equally all such fees and expenses unless the parties agree to some other allocation. The Court may determine a different allocation.
 - (iii) Subject to Court approval, if the estate is to be charged with such expense, the mediator or arbitrator may be reimbursed for actual

transportation expenses necessarily incurred in the performance of duties.

- (g) Party Unable to Afford. If the Court determines that a party to a matter assigned to mediation or arbitration cannot afford to pay the fees and costs of the mediator or arbitrator, the Court may appoint a mediator or arbitrator to serve pro bono as to that party.