

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.
- (e) PARTY UNABLE TO AFFORD.
  - (1) MOTION. Any party may move the court for a finding that it is unable to pay the costs of the mediation. If the court determines that the party to a matter referred for mediation is unable to pay its share of the costs of the mediation, the court may waive those fees for a particular party or reallocate the waived fees to the other

parties.

- (2) DEFERRAL. The court may defer ruling on such a motion until the mediation is completed or, if the mediation is unsuccessful, until after the matter is tried, at which time the court shall consider the outcome of the action, including whether a judgment was rendered in the movant's favor and whether the movant can pay fees in installments or through a bankruptcy plan.

RULE 9019-2(7)  
INADMISSIBILITY OF NEGOTIATIONS

- (a) Evidence of statements made and conduct occurring in a mediated settlement conference conducted under these Rules, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the bankruptcy case or adversary proceeding or other related cases or proceedings, except:
- (1) In proceedings for sanctions under these Rules;
  - (2) In proceedings to enforce or rescind a settlement of the action;
  - (3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
  - (4) In proceedings to enforce laws concerning juvenile or elder abuse.
- As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.
- (b) No settlement agreement to resolve any or all issues reached at the proceeding conducted under these Rules or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties.
- (c) No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.
- (d) No party, mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:
- (1) to attest to the signing of any agreements;
  - (2) proceedings for sanctions under this section;
  - (3) disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; and
  - (4) proceedings to enforce laws concerning juvenile or elder abuse.

Rule 7016-1  
PRETRIAL PROCEDURES

- (a) PRELIMINARY PRETRIAL CONFERENCE.
- (1) SCHEDULING AND NOTICE. A preliminary pretrial conference may be scheduled at the discretion of the court. The clerk of court shall give at least 21 days notice of the conference.
  - (2) PREPARATION BY COUNSEL FOR PRELIMINARY PRETRIAL CONFERENCE.  
Counsel shall be prepared to discuss at the conference the following:
    - (A) the issues raised by the pleadings;
    - (B) issues concerning jurisdiction, venue, or the authority of the bankruptcy court;
    - (C) if the proceeding is not a core proceeding or is a core proceeding that the court may only hear and determine with the consent of the parties, whether the parties consent to the bankruptcy judge hearing and determining the proceeding pursuant to 28 U.S.C. § 157(c)(2);
    - (D) the disposition of pending motions;
    - (E) the necessity, desirability, and timing of amendments to pleadings, joinder of additional parties, the filing of additional motions, and [the amount of time needed for discovery](#);
    - (F) the timing and form of disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure, including a statement of when disclosures under (a)(1) were made or should be made;
    - ~~(G) [the amount of time that will be needed for discovery](#);~~
    - (H) changes that should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure;
    - (I) whether use of expert witnesses is contemplated, and if so, whether and when the disclosure of expert information as required by Rule 26(a)(2) of the Federal Rules of Civil Procedure should be required;
    - (J) if a jury demand has been made in a core proceeding, whether the parties consent to a jury trial in the bankruptcy court;
    - (K) whether the parties have engaged in settlement discussions;
    - (L) whether the parties have considered voluntary or court ordered mediation and/or arbitration;
    - (M) the need for additional pretrial conferences;
    - (N) whether there are witnesses whose testimony could be accommodated at deposition or trial by video conferencing, and if so, what stipulations can be made regarding the appearance of witnesses by video conferencing.
  - (3) PRELIMINARY PRETRIAL CONFERENCE REPORT. At least seven days prior to the preliminary pretrial conference, counsel shall file with the clerk of court a joint report containing information concerning all the items to be discussed at the preliminary pretrial conference.
  - (4) DISCLOSURES. Unless counsel agree to disclosures at an earlier date, disclosures required to be made by Rule 26(a) and (b), Federal Rules of Civil Procedure, shall be made at the time and under the circumstances directed by the court in the

scheduling order entered after receipt of the preliminary pretrial conference report.

Rule 9036-1(1)  
DEBTOR'S ELECTRONIC NOTICING REQUEST

- (a) **DeBN REQUEST FORM.** Each debtor who files a voluntary petition in bankruptcy on or after \*, must file, contemporaneous with the petition, a completed Debtor's Electronic Noticing Request (DeBN Request) on the form provided by the Clerk of the Bankruptcy Court. Each DeBN Request must indicate whether the debtor:
  - (1) requests creation of a new DeBN account to begin receiving court notices and orders via email pursuant to Rule 9036, Federal Rules of Bankruptcy Procedure;
  - (2) declines participation in the DeBN program;
  - (3) requests an update to or reactivation of an existing DeBN account; or
  - (4) requests deactivation of an existing DeBN account.
- (b) **EMAIL ADDRESS.** Requests to create a new DeBN account and requests to update or reactivate an existing DeBN account must list a valid and active email address for the debtor. A debtor may list the same email address that was listed on a joint debtor's DeBN Request; however, each debtor and each joint debtor must sign and file a separate DeBN Request regardless of whether they share the same email address.
- (c) **PROOF OF IDENTITY.** All DeBN Requests must be filed with sufficient evidence of the debtor's identity. The debtor provides sufficient evidence of identity when:
  - (1) the debtor's attorney files the DeBN Request electronically in CM/ECF;
  - (2) the debtor files the DeBN Request in person at the Clerk's Office and displays a photo identification or other information that would satisfy 11 U.S.C. § 521(h); or
  - (3) the debtor files the DeBN Request by mail and provides a copy of a photo identification or other information that would satisfy 11 U.S.C. § 521(h).
- (d) **CLERK DUTIES.** The clerk will act upon the DeBN Request promptly after it is filed. While the debtor's DeBN account is active, the clerk is directed to send court-issued notices and orders via email pursuant to Rule 9036, Federal Rules of Bankruptcy Procedure, whenever the clerk would otherwise be required to send the notice or order by regular mail.
- (e) **UNDELIVERABLE EMAIL NOTICES.** If an attempt to deliver a notice or order via email fails, the debtor's DeBN account may be immediately deactivated. A debtor may reactivate the debtor's DeBN account by submitting a DeBN Request to reactivate an existing account and supplying a valid and active email address.
- (f) **SCOPE OF DeBN.** The existence of an active DeBN account does not authorize any person other than the court to provide notice of service solely by email if notice or service would otherwise be required by regular mail or other means.