

Court Procedures Manual

November 14, 2002 - **DRAFT**

Items in this Manual:

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DIVISION OF BUSINESS BETWEEN PITTSBURGH AND ERIE DIVISION

The Pittsburgh Division is comprised of the following counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Washington, Westmoreland, Bedford, Blair, Cambria, Indiana, Somerset and Clearfield.

The Erie Division is comprised of the following counties: Erie, Clarion, Elk, Jefferson, McKean, Warren, Crawford, Forest, Mercer and Venango.

DUTY TO MAKE PAYMENTS, FILE TAX RETURNS, FILE REPORTS, AND PAY TAXES
IN CHAPTER 11, AND 13 CASES

A. Payments: The trustee or debtor-in-possession in a Chapter 11 case, and the debtor if engaged in business in a Chapter 13 case, shall comply with these procedural guidelines:

1. Keep current and pay when due any debt which has arisen since the entry of the order for relief, including any debt arising from rentals or other money due on account of real estate leases; provided, however, that any debt for utility service shall be paid not later than the due date.

2. Submit by the end of the second business day after the payment of wages to employees, an accounting on IRS Form 10186 (Bankruptcy Federal Tax Deposit Accounting) and a certified or cashier's check in full payment of the employee's and employer's FICA (social security) taxes and the employee's income taxes accrued as a result of the payment of wages, to the IRS Insolvency Unit at the address listed on the Address Appendix.

3. Submit to the Pennsylvania Department of Revenue, Bankruptcy Division, at the address listed on the Address Appendix a certified or cashier's check in full payment of the following taxes in the manner hereafter set forth:

a. all Pennsylvania sales tax collected pursuant to § 72 P.S. § 7202 *et seq.* shall be remitted together with the proper tax returns, no later than the end of the fifth business day following the last day of each month in which such sales taxes were required to be collected; and

b. all employer withholding tax (personal income tax) withheld pursuant to § 72 P.S. § 7316 et seq. shall be remitted together with the proper tax returns, no later than the end of the second business day after the payment of wages to employees.

4. submit no later than the last day of the month following the end of the calendar quarter tax returns together with a certified or cashiers check in full payment of unemployment compensation employer taxes and, if required, employee contributions withheld, pursuant to 43 P.S. §785 and §781.4, to the Pennsylvania Department of Labor & Industry, Bureau of Employer Tax Operations, Bankruptcy & Compliance Unit at the address listed on the Address Appendix.

5. In the case of self-employed debtors, submit estimated federal income tax payments by April 15, June 15, September 15, and January 15 to the IRS Insolvency Unit at the address listed on the Address Appendix during the life of the Chapter 13 plan.

B. Reports in Chapter 11 Cases: The trustee or debtor-in-possession in a Chapter 11 case shall:

1. timely file all federal, state, and local tax returns with the applicable taxing bodies during the pendency of the bankruptcy case;

2. file copies of the most recent balance sheet and profit and loss statement of non-individual debtors with the Clerk;

3. annually file with the Clerk within ninety (90) days of the close of a non-individual debtor's fiscal year, an updated balance sheet and profit and loss statement;

4. file an initial statement of operations, including but not limited to a report of receipts and disbursements, accrued payables and accrued receivables, for the period commencing with the date of filing of the petition and ending with the last day of the month of the filing of the petition. The initial report shall be filed with the Clerk on or before the date first set for the meeting of creditors and shall include a statement of the name and location of each depository or place of investment holding funds of the estate, and the applicable account number or numbers; and

5. file monthly statements of operations for the preceding month with the Clerk no later than the fifteenth (15th) day of the next month, and serve copies on counsel, if any, for any appointed committee in a Chapter 11 case.

C. Reports in Chapter 13 Cases: A Chapter 13 debtor engaged in business shall:

1. timely file all federal, state, and local tax returns with the applicable taxing bodies during the pendency of the bankruptcy case;

2. serve on the Chapter 13 trustee an initial statement of operations on a form promulgated or approved by the Chapter 13 trustee at least ten (10) days prior to the first date set for the meeting of creditors;

3. serve on the Chapter 13 trustee and, upon court order, any party in interest requesting copies of monthly reports of operations no later than the fifteenth (15th) day of each month for the report covering the preceding month for each month that the debtor remains in the Chapter 13 case;

4. unless ordered by the Court, such monthly reports need not be filed with the Clerk; and

D. Contents of Reports: In addition to the information required by Fed.R.Bankr.P. 2015(a)(3), all statements of operations shall contain a cumulative list of all debts which have arisen since the order for relief was entered.

WAGE ORDERS IN CHAPTER 13 CASES

A. Standard Wage Attachment Motion and Order: When the Standing Chapter 13 Trustee or the Chapter 13 debtor files a motion for a wage attachment order, the motion must substantially conform to the Ex Parte Motion for Order to Pay Trustee Pursuant to Wage Attachment and include an Order to Pay Trustee Pursuant to Wage Attachment.

B. Single Debtor: When a bankruptcy case is filed by one debtor, "Motion No. WO-1" shall be included in the caption of the Motion for Wage Attachment and the proposed order. Any motion to amend shall include "Motion No. WO-1" in the caption.

C. Joint Debtors: When a joint case is filed, the name of the debtor whose wages are to be attached shall be stated in the caption of the motion and in the proposed order. "Motion No. WO-1" shall be included in the caption of the first joint debtor requesting a wage attachment. "Motion No. WO-2" shall be included in the caption of a subsequent motion requesting a wage attachment filed by the other joint debtor.

D. Amendments of Motions for Wage Attachment:

1. Any motion to amend a wage attachment must be at the original motion number for the first or second joint debtor (WO-1 or WO-2) and shall be marked "Amended Motion for Wage Attachment" in the caption.

2. Any motion to amend the amount of the wage deduction shall request only an increase in the amount to be attached.

E. More than One Employer: If a debtor has more than one employer, separate wage attachment motions and proposed orders granting the requested relief must be filed for each employer from whom wages are to be attached. A motion naming more than one employer as a respondent will be dismissed without prejudice for failure to comply with this Local Rule.

F. Calculation of Dollar Amount of the Attachment: If the payroll period is unknown, use monthly basis. If the payroll period is known, calculate as follows:

Weekly
(52 pays/year) amount to be attached multiplied by 12 then divided by 52 (round upwards)

Biweekly
(every 2 weeks = 26 pays/year) amount to be attached multiplied by 12 then divided by 26 (round upwards)

Semi-monthly
(twice each month = 24 pays/year) amount to be attached divided by 2 (round upwards)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: Bankruptcy No.
Debtor(s) Chapter 13
Trustee, and Debtor(s), Movants Motion No. WO-1
Motion No. WO-2
v.
Respondent(s)

**EX PARTE MOTION FOR ORDER TO PAY TRUSTEE PURSUANT TO WAGE
ATTACHMENT**

_____, Chapter 13 Trustee, and the Debtor respectfully
represent as follows:

1. A Chapter 13 case was filed.
2. It appears that the Debtor receives regular income which may be attached under 11 U.S.C. §1326 to fund the Chapter 13 Plan.
3. The likelihood of success in the case will be much greater if the Debtor's income is attached to fund the plan.

WHEREFORE, the Chapter 13 Trustee and/or the Debtor respectfully request that this Court enter an Order to Pay Trustee in the form attached.

Signature of Chapter 13 Trustee or Attorney for Debtor(s)

Typed Name of Chapter 13 Trustee or Attorney for Debtor(s)

Address of Chapter 13 Trustee or Attorney for Debtor(s)

Phone No. and Pa. I.D. No. of Chapter 13 Trustee or Attorney for Debtor(s)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

Bankruptcy No.

Standing Chapter 13 Trustee and Debtor(s),
Movants

Chapter 13

Motion No. WO-1

Motion No. WO-2

v.

Respondent(s)

ORDER TO PAY TRUSTEE PURSUANT TO WAGE ATTACHMENT

The above-named Debtor(s) having filed a Chapter 13 petition and Debtor(s) or Trustee having moved to attach wages to fund the Chapter 13 Plan:

IT IS, THEREFORE, ORDERED that until further order of this Court, the entity from which the Debtor receives income:

shall deduct from that income the sum of \$ _____, beginning on the next pay day following receipt of this order and shall deduct a similar amount each pay period thereafter, including any period for which the Debtor receives a periodic or lump sum payment as a result of vacation, termination, or other benefit arising out of present or past employment, or from any other benefits payable to the Debtor, and shall remit the deducted sums ON AT LEAST A MONTHLY BASIS to:

RONDA J. WINNECOUR
CHAPTER 13 TRUSTEE, W.D. PA.
POB 1132
MEMPHIS, TN 38101-1132

IT IS FURTHER ORDERED that the above-named entity shall notify the Chapter 13 Trustee if the Debtor's income is terminated and the reason therefore.

IT IS FURTHER ORDERED that all remaining income of the Debtor, except the amounts required to be withheld for taxes, social security, insurance, pension, or union dues shall be paid to the Debtor in accordance with usual payment procedures.

IT IS FURTHER ORDERED THAT NO OTHER DEDUCTIONS FOR GARNISHMENT, WAGE ASSIGNMENT, CREDIT UNION, OR OTHER PURPOSE SHALL BE MADE FROM THE INCOME OF DEBTOR WITH THE SOLE EXCEPTION OF ANY SUPPORT PAYMENTS.

IT IS FURTHER ORDERED that this order supersedes previous orders made to the above-named entity in this case.

IT IS FURTHER ORDERED that the above-named entity shall not charge any fee to the Debtor for the administration of this attachment order, except as may be allowed upon application to and order of this Court.

DATED this _____ day of _____, _____.

United States Bankruptcy Judge

OBJECTIONS TO CLAIMS IN CHAPTER 12 AND 13 CASES

Following the deadline for filing claims, the debtor, or debtor's attorney, if any, shall review the

claims filed and file objections to any disputed claims within ninety (90) days of the claims bar date. Absent objection, the proof of claim will govern as to the nature and amount of the claim, including the amount of arrears on secured claims.

DISTRIBUTIONS UNDER CHAPTER 12 AND 13 PLANS

A. After the filing of a plan and prior to confirmation of such plan, the trustee is authorized to make distribution of the designated monthly payments on secured non-tax claims, attorney's fees, and utility accounts.

B. The failure of an unsecured creditor to file a claim shall inure to the benefit of the other unsecured creditors in the same class. The trustee shall increase the percentage to be paid accordingly, provided that payments shall not exceed one hundred percent of the total amounts of the allowed unsecured claims. Distributions to unsecured creditors shall be made on a pro rata basis as calculated by the trustee and not on a per capita basis.

C. The trustee is authorized to amend monthly payments to mortgage holders where required by floating interest rates or changes in the insurance and tax escrow payments, provided that mortgage company has given notice to the debtor and the debtor has not objected within seventeen (17) days.

D. In the event of the conversion or dismissal of a case following the confirmation of a plan, then the trustee shall distribute all funds received prior to the effective date of the conversion or dismissal, in accordance with the terms of the confirmed plan.

E. In the event that a confirmed plan provides for payment to a secured creditor and such secured creditor obtains relief from stay, then the trustee shall suspend distributions to all creditors with claims secured by the collateral released from the automatic stay, following the trustee's receipt of notice of the grant of relief. However, the trustee shall continue to make distributions to other creditors in accordance with the terms of the plan unless and until the case is converted or dismissed.

F. In the event that a plan is not confirmed, then the trustee shall refund all payments to the debtor if the case is dismissed, or to the Chapter 7 trustee if the case is converted, provided that the Chapter 13 trustee may retain an administrative fee of twenty-five dollars (\$25.00) or the United States Trustee's prevailing percentage fee, whichever is greater, for payment to the chapter 13 fee and expense fund, in payment of the costs incurred in administering the case. This amount may be adjusted by the Court from time to time or in unusual cases.

CHAPTER 13 PAYMENTS

A. Plan payments must begin within thirty (30) days after the plan's original due date. An extension of time to file a plan does not change or extend the time to make the first payment under the plan. If a plan has not been timely filed or payments have not been timely submitted to the Chapter 13 Trustee, the case shall be dismissed.

B. Payments shall be made to the Chapter 13 Trustee in the form of a money order, cashiers check, or check drawn on an attorney's trust account, by a wage attachment, or by Automated

Clearing House (ACH) if the debtor's source of income is a government pension or Social Security that is automatically deposited. Wage attachments are required for all debtors with attachable wages.

CHAPTER 13 POST CONFIRMATION MATTERS

A. Sales of Property: Notwithstanding any provision in a Chapter 13 plan revesting property of the estate in the debtor, all sales of real and personal property shall be conducted in accordance with the Federal Rules of Bankruptcy Procedure and the Local Rules. The notice of sale must state the proposed disposition of sale proceeds.

B. Postpetition Extensions of Credit: Any postpetition extensions of credit sought by the debtor shall be in the form of a motion subject to the Federal Rules of Bankruptcy Procedure and these Local Rules. Such motion shall be served upon the trustee and all parties in interest.

C. Financing of Real Property: A motion seeking real estate/mortgage financing must include the following information:

1. identity of the property that is subject to the financing;
2. identity of the source of funds;
3. description of the terms of the financing including:
 - a. if it is a mortgage, whether it will be the first mortgage on the subject property;
 - b. the amount borrowed;
 - c. the interest rate on the loan;
 - d. the number of years scheduled for repayment of the debt;
 - e. the amount of the payment of principal and interest to be paid monthly; and
 - f. the date that the loan is expected to close;
4. the proposed use of the new financing, including whether its repayment will be incorporated into the existing plan, or whether the proceeds of the financing will complete payments under the plan;
5. the status of plan payments at the time that the motion is filed; and
6. whether any further plan modification is necessary;

If insufficient funds to close the case are not paid to the trustee from the refinancing, plan payments must continue. Closing documents must be filed with the Court and served on the Trustee within five (5) days after the closing.

D. Motor Vehicle Financing: A motion seeking approval of motor vehicle financing must include the following:

1. the type and cost of vehicle being purchased;
2. the source of funds;
3. the terms of financing including:
 - a. the amount borrowed;
 - b. the interest rate on the loan;
 - c. the number of months scheduled for repayment of the debt;
 - d. the amount of the monthly payment; and
 - e. the date that the loan is expected to close.
4. the status of plan payments at the time that the motion is filed;
5. The identity of any vehicle traded in and the identity of any creditors with liens against that vehicle; and
6. whether any further plan modification is necessary;

E. An amended Chapter 13 plan must be filed within thirty (30) days after the order approving financing is signed if:

1. a new payment is to be incorporated into the Chapter 13 plan;
2. the treatment of other creditors will be changed as a result of the financing, in which case a statement of the rationale and underlying facts in support of that change must be filed; or
3. the plan payment length or the plan term is to be changed as a result of the financing.

APPROVAL OF DEBTOR'S ATTORNEY'S FEES IN CHAPTER 13 CASES

A. At the discretion of the presiding Judge in each case, fees may be approved for debtor's attorney in chapter 13 cases as part of the plan confirmation process. Confirmation of debtor's original chapter 13 plan may serve to approve fees requested, at a level set by the Court.

B. When a chapter 13 plan is amended the Court may approve additional fees reasonably related to the work performed in support of debtor's presentation of the amended plan.

C. The Court may require that a fee application be filed in any case. A fee application in a Chapter 13 case need not comply with Local Rules 2016-1 and 2016-2 but must include the following information:

1. amount of fees or retainer paid prepetition;

2. amount of fees approved to be paid through the plan and the amount actually paid; and
3. amount of fees requested through the application, a brief narrative statement of the work performed resulting in the fee request, and the time spent. Debtor's attorney is required to maintain detailed fee records and to produce them when the court so requires.

SALE OF ESTATE PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS

A. Sale of Property

1. All sales not in the ordinary course of debtor's business shall be by motion, except where the seller also seeks:

(a) to determine the validity, priority, or extent of a lien or other interest in property, other than the avoidance of a lien or other transfer of property exempt under §522(f) of the Code, or

(b) to obtain approval pursuant to §363(h) of the Code for the sale of both the interest of the estate and of a co-owner in property.

In such excepted cases, the seller shall file an adversary and proceed by the adversary procedures including service of a summons set forth in Part VII of the Bankruptcy Rules and any Local Rules and procedures in effect in this District. A proposed order approving the sale shall be attached to the motion or complaint.

B. Before filing any motion for sale, the seller shall obtain from the appropriate Court personnel a sale hearing time and date which shall normally be a time and date on which the Court regularly hears motions. Provided, however, if the seller anticipates that the sale hearing will take more than a limited time the seller shall so notify the appropriate Court personnel and obtain a time and date which will allow sufficient time for the Court to dispose of the motion to sell property.

C. Responses and objections shall be filed and served at least seventeen (17) days prior to the sale hearing date. In addition to parties required to be served, responses and objections shall be filed on the initial offeror and counsel. The objecting party must attend the hearing or file and serve a notice of withdrawal of the objection at least two (2) business days prior to the hearing. Higher or better bids are not an objection to the motion.

D. If the property to be sold has an aggregate value of less than the value specified in Fed.R.Bankr.P. 6004 (d), notice by publication shall be at the discretion of the seller.

E. Notice Requirements

1. The seller shall send the Notice of Sale by first-class mail, or electronically to those parties who consent to receipt of electronic notice, to :

(a) the debtor and debtor's counsel;

(b) the trustee and trustee's counsel, if any;

(c) all indenture trustees and their counsel, if any;

(d) lien holders;

- (e) all creditors;
- (f) all committees appointed pursuant to the Code or to their authorized agents and their counsel, if any;
- (g) the United States as required by Fed.R.Bankr.P. 2002(j); and
- (h) the United States Trustee.

2. The debtor in possession or trustee may file a motion, served on all creditors and parties in interest, to establish a procedure for selling less than substantially all the assets of the estate or those assets of less than substantial value. The motion to establish sale procedure may provide that the notice of sale be served on a limited list of creditors and parties in interest. Each such list must be set forth with particularity in the motion to establish the sale procedure.

3. Addresses for Notice of Sale and Motions to Sell: Any notice required to be served under these procedures shall be addressed as directed in a request for notices filed with the Clerk but if a different address is stated in a proof of claim duly filed, that address shall be used; otherwise, to the address shown in the list of creditors in the schedules. Service may be made electronically if consent exists.

F. Conduct of Sale Not in The Ordinary Course of Business Pursuant to Fed.R.Bankr.P. 6004(f)

1. The Notice of Sale and publication of the Notice must contain the following information:
 - (a) the case bankruptcy name and number and the adversary name and number or docket number of the motion;
 - (b) a brief description of the property to be sold (examples: personalty (Dodge Truck) or realty (123 First Street and deed book volume and page number));
 - (c) the date, time and place of sale hearing;
 - (d) the date by which objections to the sale must be filed and served;
 - (e) a statement of the amount of the initial offer and that higher or better offers will be considered at the hearing;
 - (f) the name, address, and telephone number of the person to contact for terms and conditions of sale or to examine the property; and
 - (g) hand money requirements at the time of the hearing.

2. Publication: Notice of any proposed sale shall be advertised by the seller by publication once in a newspaper of general circulation in the county in which the property is located and in the Legal Journal of such county if one exists. The publication shall be made no more than twenty (20) nor less than five (5) calendar days before the scheduled date of sale.

3. Proofs of publication of the advertising must be filed when received by movant or representation made to the Court at the time of the sale hearing that publication was made and that proofs of publication will be filed when received by the movant.

4. Reports of Sale: An itemized Report of Sale shall be filed with the Court within five (5) calendar days of the date of consummation of the sale.

PROCEDURES GOVERNING MEDIATION OF MATTERS IN BANKRUPTCY CASES

1.0 PRELIMINARY STATEMENT.

Litigation in bankruptcy cases frequently imposes significant economic and other burdens on parties and often delays resolution of disputes. Alternate dispute resolution procedures have the potential to reduce delay, cost, stress and other burdens often associated with litigation. Mediation, in particular, allows parties more active involvement in determining the resolution of their disputes. To provide a court-annexed alternate dispute resolution procedure, the court hereby adopts this Mediation Program for the Western District of Pennsylvania (the "Mediation Program").

2.0 ASSIGNMENT OF MATTERS TO MEDIATION.

The court may assign any matter deemed relevant to the Mediation Program *sua sponte*, upon written stipulation of the parties to the matter, or on motion of a party to the matter or the U.S. Trustee. Upon the motion of the mediator, a party to the mediation, or the U.S. Trustee, the court may order additional parties to participate in the mediation if the presence of the additional parties would be necessary or helpful to a successful mediation.

3.0 TYPES OF MATTERS SUBJECT TO MEDIATION.

The court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. FED.R.BANKR.P. 7016 hereby is made applicable to all matters in which mediation is requested in accordance with the Mediation Program.

4.0 EFFECT OF MEDIATION ON PENDING MATTERS.

The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the United States Code, the Federal Rules of Bankruptcy Procedure, or the local rules of this court. The assignment to mediation does not delay or stay discovery, pretrial, hearing dates, or trial schedules.

5.0 THE MEDIATOR.

5.1 Register of Mediators/Mediation Program Administrator.

The Clerk of the Court shall establish and maintain a register of persons (the "Register") qualified under this section 5.0 and designated by the court to serve as mediators in the Mediation Program. The Chief Bankruptcy Judge shall appoint a judge of this court to serve as the "Mediation Program Administrator." Aided by a staff member of the court, the Mediation Program Administrator shall receive applications for designation to the Register, maintain the Register, track and compile reports on the Mediation Program, and otherwise administer the program.

5.2 Application and Certification of Mediators.

5.2.1 Application and Qualification Requirements.

Each applicant shall submit to the Mediation 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 in the form attached hereto as Form A. 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 Mediation Program. Each applicant shall certify that the applicant has completed appropriate mediation training or has sufficient *pro bono* experience in the mediation 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 Mediation 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.

5.2.2 Court Certification.

The court in its sole and absolute determination on any basis shall grant or deny an application submitted pursuant to subsection 5.2.1 of this General Order. If the court grants the application, the applicant's name shall be added to the Register, subject to removal pursuant to subsection 5.4. of this General Order.

5.2.3 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.

5.3 Mediator's Oath.

Before serving as a mediator, each person designated as a mediator shall take the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will faithfully and impartially discharge and preform all the duties incumbent upon me as a Mediator in the Mediation Program of the U.S. Bankruptcy Court for the Western District of Pennsylvania without respect to persons and will do so equally with respect to the poor and to the rich."

5.4 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.

6.0 APPOINTMENT OF A MEDIATOR.

6.1 Appointment by Court.

Upon assignment of a matter to mediation and unless special circumstances exist as determined by the court, the parties shall select a mediator and an alternate mediator from a listing of three (3) mediators from the register selected by the court. If the parties fail to make such selection within the time frame as set by the court, then the court shall appoint a Mediator and alternate Mediator.

6.2 Inability of Mediator to Serve.

If the mediator is unable or elects not to serve, the mediator shall file and serve on all parties to the mediation and on the alternate mediator, within seven calendar days after receipt of notice of appointment, a notice of inability to accept the appointment. The alternate mediator then shall become the mediator, if the alternate does not file and serve on all parties to the mediation a notice of inability or election not to accept the appointment within seven calendar days after receipt of the original mediator's notice of inability to accept the appointment. If neither the mediator nor the alternate

mediator can serve, the court shall appoint another mediator and alternate mediator.

6.3. Disqualification of Mediator.

6.3.1 Disqualifying Events.

Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. §144. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. §455 would require disqualification if that person were a judge.

6.3.2 Inquiry by Mediator; Disclosure.

Promptly after receiving notice of appointment, the mediator shall make inquiry sufficient to determine whether there is a basis for disqualification under subsection 6.3.1. of the General Order. The inquiry shall include, but shall not be limited to, a search for conflicts of interests in the manner prescribed by the applicable rules of professional conduct for attorney mediators, and by the applicable rules pertaining to the mediator's profession for non-attorney mediators. Within seven calendar days after receiving notice of appointment, the mediator shall file with the court and serve on the parties to the mediation either (a) a statement that there is no basis for disqualification under subsection 6.3.1 and that the mediator has no actual potential conflict of interest or (b) a notice of withdrawal.

6.3.3 Objection Based on Conflict of Interest.

A party to the mediation who believes that the assigned mediator and/or the alternate mediator has a conflict of interest promptly shall bring the issue to the attention of the mediator and/or the alternate mediator, as applicable, and to the other parties to the mediation. If the mediator does not withdraw, and the movant is dissatisfied with this decision, the issue shall be brought to the court's attention by the mediator or any of the parties to the mediation. The court shall take such action as the court deems necessary or appropriate to resolve the alleged conflict of interest.

6.4 Mediator's 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 pursuant to this General Order on account of any act or omission in the course and scope of such person's duties as a mediator.

7.0 COMPENSATION.

7.1 Compensation of Mediator.

Before a party will be eligible to be a paid mediator, that person must have fulfilled the pro bono requirement. Once eligible to serve as a mediator for compensation, which shall be at reasonable rates and subject to judicial review, the mediator may require compensation or reimbursement of expenses as agreed by the parties to the mediation. Prior court approval shall also be required if the estate is to be charged. If the mediator consents to serve without compensation, and, at the conclusion of the first full day of the mediation conference it is determined by the mediator and the parties to the mediation that additional time will be both necessary and productive in order to complete the mediation, then:

(1) If the mediator consents to continue to serve without compensation, the parties to the mediation

may agree to continue the mediation conference; and

(2) If the mediator does not consent to continue to serve without compensation, the mediator's fees and expenses shall be on such terms as are satisfactory to the mediator and the parties to the mediation, subject to court approval.

Where the parties have agreed to pay mediation fees and expenses, they shall share equally all such fees and expenses unless the parties to the mediation agree to some other allocation. The court may, in the interest of justice, determine a different allocation.

7.2 Party Unable to Afford Mediator.

If the court determines that a party to a matter assigned to mediation cannot afford to pay the fees and costs of the mediator, the court may appoint a mediator to serve *pro bono* as to that party.

8.0 THE MEDIATION.

8.1 Time and Place of Mediation Conference.

After consulting with all counsel and *pro se* parties, the mediator shall schedule a convenient time and place for the mediation conference, and promptly give all counsel and *pro se* parties at least 14 calendar days written notice of the time and place of the mediation conference. The mediator shall schedule the mediation to begin as soon as practicable.

8.2 Submission Materials.

Not less than seven calendar days before the mediation conference, each party shall submit directly to the mediator, and serve on all counsel and *pro se* parties, any materials the mediator directs to be prepared or assembled. The mediator shall so direct not less than 14 calendar days before the mediation conference. Prior to the mediation conference, the mediator may talk with the participants to determine what materials would be helpful. The submissions shall not be filed with the court and the court shall not have access to them. The mediator may receive in camera submissions if all parties consent.

8.3 Attendance at Mediation Conference.

8.3.1 Persons Required to Attend.

The following persons personally must attend the mediation conference:

- (1) Each party that is a natural person;
- (2) 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 has full authority to negotiate and settle the matter on behalf of the party;
- (3) If the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;
- (4) the attorney who has primary responsibility for each party's case; and

(5) Other interested parties such as insurers or indemnitors or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to mediation.

8.3.2 Excuse.

A person required to attend the mediation is excused from appearing if all parties and the mediator agree that the person need not attend. The court for cause may excuse a person's attendance.

8.3.3 Failure to Attend.

Willful failure to attend any mediation conference, and any other material violation of this General Order, shall be reported to the court by the mediator and may result in the imposition of sanctions by the court. Any such report of the mediator shall comply with the confidentiality requirement of section 9.1 of this General Order.

8.4 Mediation Conference Procedures.

The mediator may establish procedures for the mediation conference.

9.0 CONFIDENTIALITY OF MEDIATION PROCEEDINGS.

9.1 Protection of Information Disclosed at Mediation.

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings, evidence pertaining to any aspect of the mediation effort, including but not limited to:

- (a) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (b) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator;
- (c) proposals made or views expressed by the mediator;
- (d) statements or admissions made by a party in the course of the mediation; and
- (e) documents prepared for the purpose of, in the course of, or pursuant to the mediation.

In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediation or other alternative dispute resolution procedure shall apply.

Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation.

9.2 Discovery from Mediator.

The mediator shall not be compelled to disclose to the court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications or other documents received or made by a mediator while serving in such capacity. The mediator shall not

testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation.

Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the court in writing, from filing a final report as required by subsection 10.1, or from complying with the obligations set forth in section 11.0.

9.3 Protection of Proprietary Information and in camera submissions.

The parties, the mediator, and all mediation participants shall protect proprietary information and in camera submissions.

9.4 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 information.

10.0 RECOMMENDATIONS BY MEDIATOR.

The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to attorneys or *pro se* litigants, but not to the court.

11.0 POST MEDIATION PROCEDURES.

11.1 Preparation of Orders.

If a settlement is reached at a mediation, a party designated by the mediator shall submit a fully executed stipulation and proposed order to the court within twenty calendar days after the end of the mediation. If the party fails to prepare the stipulation and order, the court may impose appropriate sanctions.

11.2 Mediator's Certificate of Completion

Promptly after the mediation conference, the mediator shall file with the court, and serve on the parties and the Mediation Program Administrator, a certificate in the form provided by the court showing compliance or noncompliance with the mediation conference requirements of this General Order and whether or not a settlement has been reached. Regardless of the outcome of the mediation conference, the mediator shall not provide the court with any details of the substance of the conference.

11.3 Mediator's Report.

In order to assist the Mediation Program Administrator in compiling useful data to evaluate the Mediation Program, and to aid the court in assessing the efforts of the members of the Register, the mediator shall provide the Mediation Program Administrator with an estimate of the number of hours spent in the mediation conference and other statistical and evaluative information on a form provided by the court. The mediator shall provide this report whether or not the mediation conference results in settlement.

12.0 WITHDRAWAL FROM MEDIATION.

Any matter assigned to mediation may be withdrawn from mediation by the court at any time.

13.0 TERMINATION OF MEDIATION.

Upon the filing of a mediator's certificate pursuant to subsection 11.2 or the entry of an order withdrawing a matter from mediation pursuant to section 12.0, the mediation will be deemed terminated, and the mediator excused and relieved from further responsibilities in the matter without further court order. If the mediation conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing pursuant to the court's scheduling orders.

14.0 OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

Nothing contained herein is intended to prevent or discourage the parties from employing any other method of alternative dispute resolution.

REQUESTS FOR TRANSCRIPTS - PITTSBURGH

A. Form of Request: Parties may request transcripts or an audio recording on cassette or compact disk by either filing a transcript request with the Clerk on a form available from the Clerk and the Court's web site or by verbal request made to an Electronic Court Reporter Operator ("ECRO"). If a verbal request is made, the party requesting the transcript must also provide the ECRO with a written request containing the details of the request and payment as described below before the request will be processed.

B. If the request is in connection with an appeal, Local Rule 8006-1 also must be adhered to.

C. Contents of Request: The requesting party shall provide the ECRO with:

1. the name of the case,
2. the bankruptcy and motion or adversary numbers,
3. the date of the hearing,
4. the name of the Judge who heard the matter, and
5. the requesting party's name, telephone number, and mailing address and/or e-mail address and/or fax number.

D. Payment: The ECRO shall estimate the cost of the transcript and the party requesting the transcript shall provide appropriate payment before the transcript request is processed. Checks written on a firm's business account will be accepted. Pro se litigants must submit payment by money order or certified or cashiers check.

E. Release of Transcript to Requesting Party: When the completed transcript is received by the ECRO, the ECRO shall notify the requesting party that the transcript is available and shall notify the requesting party whether the actual cost of the transcript exceeded the estimate. If the actual cost of the transcript exceeded the estimate, the transcript will not be released until the additional payment is made. If the actual cost is less than the amount paid, the excess amount will be refunded.

F. Expedited Transcripts: If the requesting party wants an expedited transcript the requesting party shall notify the ECRO at the time the transcript is ordered. There is extra cost associated with expedited transcripts.