

## MEDIATION AND ASSESSMENT PROGRAM

### GUIDELINES FOR OUTSIDE MEDIATORS

#### U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

These Guidelines are applicable to those individuals approved as Outside Mediators in accordance with the terms of the Court's General Order for the Mediation and Assessment Program and to those individuals not on the Court's List of Mediators but who have been approved by the MAP Director in a particular case to serve as the mediator.

1. The Mediation and Assessment Program (MAP) General Order. Read the Court's General Order governing the Mediation and Assessment Program (eff. August 1, 2013).
2. Oath. The General Order requires that each Outside Mediator take or sign the oath of affirmation prescribed by 28 U.S.C. Section 453 before acting as a mediator. The oath may be found on the Court's website under the MAP tab. Each Outside Mediator should email ([map@mow.uscourts.gov](mailto:map@mow.uscourts.gov)) or fax (816.512.5089) a copy of his/her signed oath to the MAP office.
3. Timing Requirement. When a case is assigned to MAP and to the outside mediator category, the parties receive notice that within 14 days after the Rule 26 meeting they are required to file a Designation of Mediator certificate identifying their selected outside mediator, and the scheduled date, time and location of the in-person mediation which shall occur within 75 days after the Rule 26 meeting. Accordingly, mediations should be scheduled promptly and must be held within 75 days after the Rule 26 meeting unless a different deadline has been set by the MAP Director or the Court. Outside Mediators may, with the consent of all parties and counsel, reschedule the mediation to a date certain no later than ten (10) calendar days after the scheduled mediation date. Any continuance beyond that time or any continuance of the mediation deadline itself must be approved in advance in writing by the MAP Director.
4. In-Person Attendance Requirements. **Lead trial attorneys, the parties, party alternate(s) and the insurance representative(s) must be present in person for mediation. Being "available" by phone or holding a telephonic mediation is not permitted. The personal presence of the lead trial attorneys, parties, party alternate(s) and insurance representative(s) cannot be excused without the Outside Mediator obtaining the prior written approval from the MAP Director. Note that parties may be required to redo the mediation if they have not complied with the attendance requirements.**
5. Fees Charged by Outside Mediator. Outside Mediators are permitted to charge a reasonable fee not to exceed the posted hourly rate on the Court's List of Mediators. However, if agreed in writing and in advance between the Outside Mediator and the parties, the Outside Mediator may be compensated at a different hourly rate or by an alternative arrangement. Outside Mediators should specify in writing in advance if they

might bill for preparation time, research time, reviewing pleadings, post-mediation activities, travel time and travel expenses. Outside Mediators are not to bill for the time of others (associates, partners, paralegals, secretaries, etc.). Mediator compensation is subject to Court approval.

6. Responsibility for Mediator's Fees. The parties are permitted to reach a written agreement as to who is responsible for what share of the Outside Mediator's fees. In the absence of a written agreement otherwise, it is assumed that each side of a two-party case will pay one-half of the cost of the Outside Mediator. The MAP Director or the Court may make a different allocation. The Mediation and Assessment Program is not responsible for processing the Outside Mediator's bill or for seeing that it is paid.
7. IFP. If a party has been allowed to file *in forma pauperis*, and that status has not been revoked by the Court at the time of the mediation, that party will not be required to pay the Outside Mediator. The session with the Outside Mediator in an *informa pauperis* matter shall not exceed two hours unless otherwise agreed to by the Outside Mediator and all participating parties.
8. Location of Mediation. Mediation sessions are to be conducted in the city of the divisional office in which the case is pending, unless otherwise agreed to in advance by the parties or approved in advance in writing by the MAP Director.
9. Conflicts of Interest. No person should serve as an Outside Mediator in an action in which any of the circumstances specified in 28 U.S.C. Section 455 or in 28 U.S.C. Section 144 exist or, in good faith, are believed to exist. If a party or an Outside Mediator believes there may be a conflict of interest, they should make the possible conflict of interest known to each party within five business days after learning of the possible conflict.
10. Case Information. Outside Mediators may request from the parties a short mediation statement and/or conduct pre and post mediation calls with the parties.
11. Expectations. Mediations and other ADR option sessions will be conducted in a professional and civil manner. Personal attacks, language or gestures by attorneys, parties or representatives intended to be offensive shall be reported to the MAP Director. If you have other problems or concerns, please email ([map@mow.uscourts.gov](mailto:map@mow.uscourts.gov)) or call the MAP Director (816-512-5080) for assistance or guidance.
12. Term Sheet. In all cases in which the Outside Mediator has conducted mediation and the parties have reached a resolution, the Outside Mediator should require at the mediation that the parties execute a written term sheet reflecting the major terms of the agreement.
13. Post-Mediation Status Report. Within ten (10) calendar days after a mediation is completed, the Outside Mediator should email ([map@mow.uscourts.gov](mailto:map@mow.uscourts.gov)) or fax (816.512.5089) a mediation status report to the MAP Director including the date of the

mediation, how long the mediation lasted, whether the required counsel, parties and representatives appeared in person, whether the case was settled, and, if not, whether an additional session might be helpful in resolving the matter (including what items/events need to occur first and the anticipated completion date for those items/events). The Outside Mediator is not required to copy counsel on the post-mediation status report but may choose to do so.

14. Pro Bono Requirement. At the request of the MAP Director or the Court, Outside Mediators may be required to do one or two pro bono cases per calendar year.

Jill A. Morris  
MAP Director  
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