



Magistrate Judge Lajuana M. Counts  
Charles Evans Whittaker Courthouse  
400 E. 9<sup>th</sup> Street  
Kansas City, Missouri 64106  
(816) 512-5775

### STANDING ORDER FOR MAP MEDIATIONS AND SETTLEMENT CONFERENCES

#### 1. MAP GENERAL ORDER

If the matter is before this Court as part of the Mediation and Assessment Program (MAP), the parties should familiarize themselves with the MAP General Order located on the Court's website at [https://www.mow.uscourts.gov/sites/mow/files/MAP\\_GO.pdf](https://www.mow.uscourts.gov/sites/mow/files/MAP_GO.pdf)

#### 2. ATTENDANCE REQUIREMENT

Unless the Court allows otherwise by separate order, parties with full and complete settlement authority are required to personally attend the mediation. This means that if a party is an individual, that individual must personally attend; if a party is a corporation or governmental entity, a representative of that corporation or government entity (other than counsel of record) with settlement authority must personally attend. If a party requires approval by an insurer to settle, a representative of the insurer with full and complete settlement authority must attend. Absent a showing of unusual and extenuating circumstances, the Court will not permit a client to merely be available by telephone as an alternative to personal presence at the conference.

#### 3. TIME ALLOTTED FOR MEDIATION/SETTLEMENT CONFERENCES

The Court allots half-a-day for mediations. If the parties believe that more time is required, the parties are to contact chambers forthwith.

#### 4. MEDIATION/SETTLEMENT CONFERENCE STATEMENTS

The parties are to submit a mediation statement **five business days prior** to the scheduled mediation. **Failure to submit a timely mediation statement will result in the mediation being rescheduled and a status conference being set.** Mediation statements should be emailed to Erica Clinton ([erica\\_clinton@mow.uscourts.gov](mailto:erica_clinton@mow.uscourts.gov)) and Traci Chorny ([traci\\_chorny@mow.uscourts.gov](mailto:traci_chorny@mow.uscourts.gov)). Do not file copies of the statements with the Clerk's Office or on the CM/ECF system.

The statement shall be no longer than five pages in length and contain the following types of information:

- a. A brief statement of the facts of the case, and of the claims and defenses, i.e., the statutory or other grounds upon which the claims are founded. This statement should identify the major factual and legal issues in dispute.
- b. An estimated statement of the damages claimed and of any other relief sought.
- c. A summary of the proceedings to date, including any pending motions.
- d. A history of past mediation discussions, offers and demands. If no discussions have taken place, the Court suggests the attorneys discuss settlement, and exchange demands and offers prior to the mediation conference.
- e. State whether there are outstanding liens and whether a representative of the lienholder should be required to be present during the mediation.
- f. State whether counsel believes joint sessions will be helpful or counterproductive.
- g. Raise any other issues the Court should be aware of in advance of the mediation.

5. **MEDIATION/SETTLEMENT CONFERENCE AGREEMENT**

By participating in this mediation/settlement conference the parties agree to the terms set forth in the Mediation/Settlement Conference Agreement, attached to this Order.

6. **FORMAT**

The Court generally will follow a mediation format: that is, each side will have an opportunity to make a brief presentation to the other side, which will be followed by joint discussions with the Court and private meetings by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. In these discussions, the Court expects all parties to be willing to reassess their previous positions, and to be willing to explore creative means for resolving the dispute.

7. **CONFIDENTIALITY**

Any statements made by any party during the mediation will not be admissible at trial. The Court expects the parties to address each other with courtesy and respect, but at the same time strongly encourages the parties to speak frankly and openly about their views of the case.

8. **CANCELLATION OR RESCHEDULING OF THE CONFERENCE**

If the parties are required to reschedule the mediation or if they have concluded mediation is not necessary or would be more productive if held at a different time, they should contact chambers as soon as possible at 816-512-5775.

### Mediation/Settlement Conference Agreement

The parties are appearing before United States Magistrate Judge Lajuana M. Counts of the United States District Court for the Western District of Missouri either in connection with a settlement conference referred to Judge Counts or in connection with the Mediation Assessment Program (MAP) for purposes of conducting a mediation. If this matter is in connection with MAP, the undersigned shall comply with all provisions of the Court's General Order for MAP. By participating in this mediation/settlement conference the parties agree to the following terms:

1. Settlement is Voluntary: All parties recognize settlement in this mediation is voluntary, and the mediator has no authority to impose a settlement on the parties.
2. Mediator: The parties agree that Judge Counts will serve as mediator in this matter. The mediator and the parties acknowledge they have no reason to believe it would be inappropriate for this mediator to mediate this matter.
3. The Mediator is Impartial: The role of the mediator is to facilitate a discussion between the parties to help them reach a voluntary settlement of their dispute. The mediator is neutral and impartial and does not represent any party.
4. Pro Se Parties: Any party without an attorney (*pro se* party) understands that the mediator is not his/her attorney and is not giving him/her legal advice. While the mediator discusses legal concepts and options with the *pro se* party and any other party, the mediator is not giving legal advice. The *pro se* party agrees that he/she has not requested, received, or relied on any legal advice from the mediator. The *pro se* party also agrees that the mediator has no duty to assert, analyze, or protect any legal right or obligation of the *pro se* party.
5. Consulting with Attorneys: During and between mediation sessions and before completing a settlement agreement, the parties to the mediation are encouraged to consult with their attorneys regarding their legal rights and obligations. While the mediator discusses legal concepts and options with the parties, the mediator is not giving legal advice or counsel to any person or entity in the mediation. The parties and their counsel agree they have not sought, received, or relied on such advice and further agree that the mediator has no duty to assert, analyze, or protect any legal right or obligation of any party or participant.
6. Caucuses: Generally, the mediator holds private sessions with one party at a time. These private sessions or "caucuses" are designed to improve the mediator's understanding of the party's position. Information gained through the caucus may be disclosed by the mediator to any other party, unless the party disclosing such information instructs the mediator not to disclose such information to another party or parties.
7. Confidentiality: The parties recognize and agree that mediation sessions are confidential in the (1) no participant or person in the mediation may later testify or seek to compel the testimony of another in any proceeding as to what statements were made or omitted by any person in connection with the mediation session or what happened during the mediation, (2) no statements

or materials made or omitted in the mediation shall be subject to discovery in any proceeding, and (3) the disclosure by a party or by the mediator of any information in the mediation shall not alter its confidential or privileged character. The parties further agree that they will not subpoena or otherwise seek to compel the mediator to testify or produce records, notes, or work product in any proceedings as to what was said or produced in the mediation session or in any communication made as part of arranging for the mediation. Unless otherwise agreed, the results of the mediation are not confidential. The parties understand that certain information from the mediation may be used by the mediator in reports, papers, presentations, etc., but that such information will not be linked to a specific case or a specific party outside the Court or the MAP office, unless otherwise required by Court order, applicable law, or as necessary to defend any action arising from the mediation. Finally, because of the confidential nature of the discussions that occur during the course of the mediation, the parties agree that communications that occur during the course of the mediation may not be shared with members of the news media in any capacity. The parties understand that if a violation of the rule of confidentiality occurs, the mediator will contact the district or magistrate judge assigned to the case and report the violation. The judge assigned to the case will make the determination of whether sanctions should be imposed against the offending party or attorney for an intentional violation of the rule of confidentiality.

8. Reporting Obligations: If during the mediation a matter comes to the mediator's attention which the mediator is obligated to report to any agency or authority, nothing contained herein shall prohibit the mediator from making such a report or disclosure. The participants understand that the mediator may be obligated to report the commission of a crime during the mediation process or an expressed intent to commit a crime in the future, and nothing herein shall prevent the reporting of such crimes or expressed intents. The participants hereby agree to release and hold the mediator, mediator's staff, and the District Court harmless from any damage suffered as a result of such disclosures.

/s/ Lajuana M. Counts

Lajuana M. Counts

United States Magistrate Judge

Western District of Missouri