

**MEDIATION AND ASSESSMENT PROGRAM (MAP)
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 Mediation and Assessment Program (MAP) General Order 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. All Outside Mediators shall be familiar with and abide by the MAP General Order.

If you have questions or concerns, please email (map@mow.uscourts.gov) or call the MAP Director (816-512-5080).

1. **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 is on the Court's website under the MAP tab. The executed oath should be e-mailed (map@mow.uscourts.gov) or faxed (816-512-5089) to the MAP office.
2. **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 mediation which shall occur within 75 days after the Rule 26 meeting.

Mediations should be scheduled promptly and must be held within 75 days of 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.

3. **In-Person Attendance Requirements**. **Absent a specific exemption provided by the Court or MAP Director, an Outside Mediator must require that lead trial attorneys, the parties, party alternate(s) and the insurance representative(s) be present in-person for mediation. Being "available" by phone or holding a telephonic mediation is not permitted absent a specific written exemption from the Court or MAP Director.**

Where there is an exemption to the in-person attendance requirement, all required participants under the MAP General Order **shall** participate in a video mediation by the use of both audio and video, unless there is an unavoidable technological impediment or written approval is secured in advance from the MAP Director.

Parties may be required to redo the mediation if they have not complied with the attendance requirements.

In some cases, more than one mediation session may be needed. If the initial session has occurred in compliance with the timing requirement and with the required participation, subsequent mediation sessions may occur in the manner the Outside Mediator determines most appropriate, including in-person, and/or through a series of telephone conferences,

video conferences, or other communications, all of which shall be conducted in accordance with the spirit of the MAP General Order and treated as confidential.

4. Confidentiality. The Outside Mediator should ensure that participants agree to confidentiality. Confidentiality is applicable to all mediation sessions, including those that are conducted virtually. Mediation sessions must not be videotaped nor recorded. Any breach of confidentiality should be immediately reported to the MAP Director.
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 (or if not on the list and otherwise approved, shall only charge a reasonable fee). 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, each side of a two-party case will pay one-half of the cost of the Outside Mediator, and in multi-party cases, the parties will proportionally share in and pay the fees of the Outside Mediator, absent a different allocation determined by the MAP Director or the Court.

The MAP is not responsible for processing the Outside Mediator's bill or for seeing that it is paid.

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.

7. 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.
8. 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.
9. Case Information. Outside Mediators may request from the parties a short mediation statement and/or conduct pre and post mediation calls with the parties. Any such

communications will be confidential unless otherwise discoverable or otherwise expressly agreed by the parties and the Outside Mediator.

10. Expectations. Mediations and other ADR option sessions shall be conducted in a professional and civil manner. Personal attacks or offensive language or gestures by any participant shall be promptly reported to the MAP Director. Term Sheet. In all cases in which the Outside Mediator has conducted mediation and the parties have reached a resolution, in whole or in part, the Outside Mediator is encouraged to ensure that the parties execute a written term sheet reflecting the major terms of the resolution reached before the mediation session is adjourned.

11. Post-Mediation Status Report. When feasible, send an email to MAP (map@mow.uscourts.gov) at the conclusion of mediation as to whether the case resolved. Within ten (10) calendar days after a mediation is conducted, either the Outside Mediator or one or more of the parties shall email (map@mow.uscourts.gov) or fax (816-512-5089) a mediation status report to the MAP Director (*not to be filed with the Court*) containing the following:
 - a) the case name and number, the mediator's name, the date of the mediation, how long the mediation lasted, whether all the required participants appeared in-person (or if an exemption to in-person attendance, whether the participants participated as required, typically by both audio and video);
 - b) whether the case was resolved, and, if not, whether an additional session might be helpful in resolving the matter; and
 - c) if not resolved and if an additional session may be helpful in resolving the matter, specify the items/events that need to occur first and the anticipated completion date for those items/events and projected timeframe for an additional session.

The Outside Mediator or counsel or pro se parties are not required to copy other counsel or pro se parties on the post-mediation status report but may do so.

12. Pro Bono Provisions. At the request of the MAP Director or the Court, Outside Mediators may be required to handle as a mediator one to two cases per calendar year without charging fees or expenses to any party or the Court, absent an express written agreement from the MAP Director to the contrary.

The MAP Director may request that an Outside Mediator serve as counsel for an unrepresented party at a mediation, and if that request is made, the Outside Mediator serving in such capacity shall not charge the party fees or expenses absent an express written agreement from the MAP Director to the contrary. Any such request by the MAP Director for an Outside Mediator to serve as counsel for a party at a mediation shall be a limited scope representation request for mediation only and shall not obligate the Outside Mediator to provide additional services to the party.

Laurel Stevenson
MAP Director
October 2020