

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI**

**PARTICIPANT INFORMATION
Mediation and Assessment Program (MAP)**

OVERVIEW

The website contains a list of Frequently Asked Questions regarding the Mediation and Assessment Program (“MAP) which is a program implementing the use of alternative dispute resolution (ADR) for lawsuits. The Alternative Dispute Resolution Act, 28 U.S.C. §§651-658 requires each district court to authorize and administer its own ADR program. The Court administers its Program through the MAP Director consistent with the MAP General Order.

The information is provided to assist individuals and entities whose cases have been assigned to MAP, but it not a substitute for the MAP General Order. Assignment to MAP requires compliance with the General Order which is a court order.

Individuals and entities involved in a lawsuit are often referred to as litigants. Litigants can include individuals who are representing themselves (often referred to as “self-represented litigants” or persons appearing “pro se” meaning without an attorney). The term “Plaintiff” means the individual or entity seeking to recover money damages or seeking some other type of relief, and the term “Defendant” refers to the individual or entity who is alleged to be responsible for the “damages”, “wrong” or “relief” being sought.

ASSIGNMENT TO MAP

After a civil case is filed, it is usually assigned to one of three categories under MAP (MAP Director; Outside Neutral Category I or Category II; or “MAP Judge”) for the individual assigned (known as a “Neutral) to assist the parties within 75 days of the Rule 26 conference to: 1) confront the facts and issues in their case before engaging in expensive and time-consuming discovery and motion procedures; 2) engage in an early and meaningful discussion of the issues; 3) consider the views of the opposing side; 4) consider the projected costs and risks of future proceedings in an effort to come to resolution before fees and other expenses make resolution more difficult; 5) and consider other methods of resolving the disputes.

Later assignments to MAP may also occur if an initial session did not result in complete resolution or other circumstances warrant a later assignment.

METHOD OR FORM OF ADR

The form or method of ADR that may be appropriate for a lawsuit can vary, although mediation remains the most used form or method of ADR.

Mediation is a way to resolve a lawsuit or narrow issues in a lawsuit using a “Neutral” who is typically referred to as a “Mediator.” A Mediator is an individual¹ without a “stake” or interest in the case, either financially or otherwise, except to assist the parties in resolving the lawsuit or narrowing the issues in the lawsuit.² A Mediator may assist parties with discovery disputes consistent with the provisions of the MAP General Order, but cannot interfere with any order of the assigned Judge.

There are typically three parties to a mediation: the parties in the lawsuit; the lawyers for the parties (although a party can be pro se/self-represented); and the Mediator.³ All participants in mediation must be respectful toward each other, the Mediator, and the process. Each party should provide the Mediator with a list of the respective participants on behalf of a party before the mediation session.

Mediation is a process which is overseen and controlled by the Mediator, although the Mediator cannot force nor require the parties to resolve their lawsuit. Central to the mediation process is confidentiality which encourages the participants to communicate openly without concern that such communications will become part of the court file whether the lawsuit is resolved, or will be communicated on the internet, through social media, or in some other fashion to individuals or entities not participating in the process. Although communications through the process are confidential, attorneys are not relieved of their responsibilities under the Rules of Professional Conduct, including competence and diligence.

There is no “one process fits all” for mediation. A mediation may start with everyone together (often referred to as a “joint session”) with the Mediator, or mediation may start with the parties in separate rooms (often referred to as a “caucus” or “caucuses”). A Mediator may also use a series of joint sessions and caucuses throughout the process. A Mediator assists the parties in several ways, including discussing the risks and benefits of the lawsuit and alternatives for resolution.

A Mediator is not required to spend a certain amount of time with each party, nor must the Mediator hold an equal number of caucuses with each party. A Mediator may also want to communicate with any participant individually, or communicate with a couple of individuals together, even sometimes bringing a Plaintiff or Defendant together with or without their respective attorneys. Mediators must be permitted to communicate directly with both party and non-party participants, including insurance representatives.

Some cases may be suited for multiple mediation sessions over several days, and even over several months. Because mediation is a form of negotiation between the parties, it sometimes takes many hours if not many hours over multiple days to determine whether the parties can resolve the lawsuit without continuing with the time, expense, and uncertainty of litigation. Parties should have the time and ability to make voluntary and uncoerced decisions as to the process and outcome. “Self-determination” is a term often used to describe a party’s right to make voluntary and uncoerced decisions in the process.

¹ For certain cases, it may be appropriate to have a “co-mediator”. A co-mediator can be an attorney or non-attorney.

² Outside Mediators/Neutrals are allowed to charge for the services they provide.

³ Mediation is used in non-lawsuit situations, often referred to as “pre-suit” mediation. It is also used in situations involving disputes when no lawsuit is expected to be filed. As MAP involves cases that are in litigation, the information provided is use of mediation in litigated cases.

Because mediation is a process, it is often helpful for the parties, or at least counsel for parties (or if a party is pro se/self-represented) to have “pre-mediation” communications with the Mediator. To the extent such communications are consistent with the MAP General Order and those participants in the pre-mediation communications agree, the communications are confidential consistent with the MAP General Order and any agreement the Mediator may request be signed by the participants.

Pre-mediation communications are helpful to better understanding the disputes, and ensuring the identification of all required participants, such as an appropriate business representative and/or insurance representatives with authority.

Requests for a “support person” or “non-party” to attend mediation should be addressed before mediation as a party does not have an automatic right to have a support person attend mediation.

SCOPE OF NEUTRAL’S ROLE

Additional details regarding the scope of the Neutral’s role as a Mediator are addressed in the prior section and the MAP General Order, but the scope will vary depending on the method or form of ADR utilized. Regardless of the method or form, a Neutral cannot:

- 1) Recommend a legal course of action or suggest ways to help you win your case;
- 2) Answer whether federal court jurisdiction is proper in a case;
- 3) Provide “inside information” about judges or other court personnel or predict when a judge may decide any issue; or
- 4) Conduct legal research for you.

A Neutral who serves as a Mediator may also serve as a Neutral in another capacity for a case if a mediation session does not resolve a case. For example, the Neutral may use “Neutral Evaluation” (NE) or “Facilitative Communications” (FC’s), or may assist the parties with determining whether a mini trial or summary jury trial is appropriate. Additional information on alternatives to mediation (known as an ADR Option Session or “ADR-O) is set forth in the MAP General Order.

PREPARATION

Although MAP participants are not required to settle a case, preparation is both required and essential for any ADR session. Participants should review well before an ADR session any obligations they have regarding Rule 26 disclosures, including the obligation to supplement disclosures under certain circumstances. All participants are expected to prepare for and engage in ADR consistent with the purpose of the Program.

Sometimes a party may learn after a lawsuit is filed that a claim they thought was originally valid is no longer valid or may not be as valid as first thought. To ensure a meaningful session, claims (or defenses) should be evaluated to the extent possible before an ADR session.

Any Neutral or staff member of any Neutral may request communications via e-mail, facsimile, virtually, or otherwise with one or more parties and/or counsel in advance of any ADR session. Such requests should be addressed promptly and professionally to achieve the purpose of the Program.