

**GUIDELINES FOR MEDIATION AND OTHER
ADR SESSIONS CONDUCTED VIRTUALLY/REMOTELY
UNDER THE MEDIATION AND ASSESSMENT PROGRAM (MAP)¹**

Overview

In accordance with Section I.F. of the MAP General Order, in-person attendance is required at any ADR session (ADR-M or ADR-O) unless; a) any Western District Judge has issued an exemption; b) the MAP Director provides a written exemption; or c) the assigned Neutral has determined that each participant requesting to engage via technology (defined in Section I.B.14 of the General Order) will comply with such Section and any guidelines issued by the Court, and the purpose of the Program can be achieved by such participation. When technological participation is allowed, any required participant in ADR-M or ADR-O through technology shall adhere to these guidelines.

Use of Technology

Privacy, Confidentiality, and Recording. Only those individuals who have been identified in advance of ADR-M or ADR-O may participate in ADR-M or ADR-O. All participants agree that all communications related to ADR-M or ADR-O involving settlement negotiations and settlement discussions, communicated in any medium, are private and confidential to the extent consistent with the MAP General Order and any applicable ADR-M or ADR-O session agreement.

Participants must not text, instant message (IM), direct message (DM) or otherwise engage in communications about the fact itself of ADR-M or ADR-O nor any the terms of settlement in connection with any such session unless expressly consented to by all participants, or such communication is necessary (i.e., insurance representatives where an insurance company is not a named party; certain corporate managers, etc.) and consistent with any applicable protective order(s) and confidentiality under the MAP General Order.

No one, nor anyone acting on behalf of any participant, unless required for persons with disabilities, may record by software application (including AI), video, or other recording device, any portion of any ADR-M or ADR-O session absent express written consent from the MAP Director or the Neutral conducting the session. The recording prohibition applies to pre-ADR and post-ADR telephone calls and electronic communications conducted in accordance with the MAP General Order.

If resolution is reached AND the participants agree, a record by a certified court reporter may be made of the terms of resolution, provided that such record is in accordance with any applicable protective order and/or confidentiality agreement. Participants are prohibited from taking

¹ These guidelines are effective March 13, 2024 and are subject to change. There are multiple ethical and legal issues associated with the use of artificial intelligence (known generally as “AI” such as ChatGPT, Bard, and similar applications) that are beyond the scope of these guidelines. Participants should exercise caution to ensure that confidentiality and other restrictions applicable to cases assigned to MAP are not violated by AI.

photographs of any type during ADR-M or ADR-O absent express permission from either the MAP Director or the person conducting ADR-M or ADR-O.

Online Platform. Participants shall familiarize themselves with the online platform for the ADR-M or ADR-O prior to the session. The most used form of technology platform for mediation is Zoom, but if another method is used, familiarize yourself with the platform prior to any ADR-M or ADR-O and ensure participants have both an AUDIO and VIDEO feature and know how to mute and unmute.

Zoom.us may be used to conduct online ADR-M or ADR-O sessions. For ADR-M or ADR-O sessions conducted by Court personnel, Zoom.gov is typically used.

Download and Testing. Before the first scheduled ADR-M or ADR-O virtual session using Zoom, participants should download and install the software and/or apps, including any necessary updates for participation. Use of Zoom in ADR-M or ADR-O works best when all parties download the Zoom app onto their respective communication devices, rather than simply using a browser. Zoom has tutorials available at <https://support.zoom.us>. If possible, test the speed and dependability of the connection BEFORE the ADR-M or ADR-O by hosting a Zoom meeting with friends or family, being mindful in doing so to avoid disclosures that would be considered confidential.

Secure connection. AVOID connections to Zoom and other platforms that are through foreign countries or through public access Wi-Fi, as these often contain malware and/or present other security risks.

Waiting rooms. Where allowed by the platform, the person conducting the ADR-M or ADR-O may use the waiting room feature to help ensure only authorized persons are admitted to the ADR-M or ADR-O. Participants may be in a waiting room until admitted by the host.

Audio and Video. Absent an unavoidable technological impairment, both audio and video must be engaged by all required participants, even when the required participant is not a named party (e.g. where an insurance company is not a named party but participation by an insurance representative is required, etc.). The person conducting the ADR-M or ADR-O must be able to see each required participant during the ADR-M or ADR-O as requested, and the person conducting the ADR-O or ADR-M can request that the screen be moved to be able to communicate directly with any individual participant.

Document Viewing/Sharing and Chat. Determine beforehand when possible whether you can privately share documents and chat communications with the person conducting the ADR-M or ADR-O or whether everyone may have accessibility to anything that is shared. When possible, evaluate in advance of any ADR-M or ADR-O whether other methods of communicating information during an ADR-M or ADR-O, such as e-mail, are appropriate.

Technology Issues. Despite best efforts, technology may fail to operate properly, and an ADR-M or ADR-O may not start on time or may be interrupted. If that happens, please first try logging out and then logging back in. If that does not work, be certain there is a protocol established for what

to do to reconnect. If there is a presumed or actual security breach, know the protocol in the event of a breach.

Joint Sessions and Breakout Rooms/Caucuses. Most persons conducting ADR-M or ADR-O tend to spend a majority of time in private breakout rooms/caucuses, much like in-person ADR-M or ADR-O. Some prefer an introductory session with everyone and thereafter transfer people into their separate breakout/caucus rooms, with the ability to bring everyone back together. Some prefer to communicate with people individually, even when represented by counsel.

When you are in your private breakout room, you should not be able to hear the person conducting the session (unless they are in the room with you) nor will you be able to hear or see the other side while they are in their own private breakout room, nor will anyone else be able to hear your private breakout room communications.

Participation

Representation and Engagement. All parties and any other necessary participants (e.g., insurance representatives) should carefully consider whether they wish to appear pro se (self-represented litigant/SRL) or with an attorney. If any attorney has entered an appearance for a party, the lead attorney, and the appropriate party or, where applicable, party representative must attend, engage, and participate in the ADR-M or ADR-O absent being excused by the MAP Director in advance of the session. In situation where an insurance company is involved, even when not a named party, the authorized representative from the insurance company must attend, engage, and participate in ADR-M or ADR-O absent being excused by the MAP Director in advance of the session.

The person conducting the ADR-M or ADR-O is not the attorney for any participant.

If the required participants are not in attendance, and/or are otherwise not prepared in accordance with the provisions of the MAP General Order, the person conducting the session has the right to terminate the session and report the non-attendance and/or lack of preparation to the MAP Director.

Avoiding Interruptions and Maintaining Respectful Verbal and Non-Verbal Communication. Participants must take all reasonable measures to avoid interruptions during ADR-M or ADR-O and must not allow individuals who have not been authorized to attend such sessions to listen in or otherwise participate in the sessions. Where applicable and feasible, participants shall arrange for appropriate childcare, schedule the ADR session for a quiet location where a door can be closed, and make appropriate scheduling choices.

The audio portion of the technology will only allow one person to talk at a time. The online format can amplify and exaggerate sound so maintain a regular speaking voice. The camera does not always capture hand gestures or non-verbal cues.

Except for the device on which ADR-M or ADR-O is being conducted, TURN OFF or SILENCE phones, tablets, or computers and disable any alert announcements and/or texts during any joint session or individual session in which the mediator or other neutral or arbitrator is present.

Participation from bed is prohibited absent a medical or health condition confining a participant to bed. No participant shall operate equipment or a vehicle (including but not limited to ATVs, cars, boats, etc.) nor travel in a vehicle during ADR-M or ADR-O.

Participants must employ good listening skills and avoid interruptions, cursing, inappropriate hand gestures, and personal attacks.

Background. Neutral backgrounds are preferred. Avoid any background that will distract from the ADR-M or ADR-O, including consideration of whether photographs or personal effects should be removed from view prior to connecting.

Clothing. All participants must be fully clothed for the entirety of the ADR-M or ADR-O. Participants shall not appear in flip flops nor in pajamas, sweats, or other workout clothes, and must take appropriate measures to avoid visible undergarments such as boxers, underwear, and bras. Attorneys shall present in court attire or business casual attire absent an express exemption granted by the person conducting the ADR-M or ADR-O.

Social Media and Internet Search Engines. During ADR-M or ADR-O, participants should refrain from the use of social media, email and/or internet search engines other than as may be necessary to conduct the session, being mindful of confidentiality and any applicable protective orders.

Other Restrictions. Smoking, vaping, or ingesting any form of nicotine, alcohol, or drugs during ADR-M or ADR-O is prohibited except as follows and only if use does not adversely impair a participant's mental state or unduly interfere with the ADR-M or ADR-O: 1) medically prescribed medications are required; or 2) a participant has allergies or a medical or health condition requiring the use of appropriate medication or inhalers during any session. If smoke breaks are needed, accommodations may be made as appropriate, but no smoke breaks while on video are permitted. Use of alcohol during ADR-M or ADR-O is prohibited.

Snacks/Meals. Snacks and meals during ADR-M or ADR-O may be permissible if participants make appropriate efforts to avoid interference with the ADR-M or ADR-O. If in doubt about eating during a session, check in advance with the person conducting the session.

Breaks and Other Accommodations. Breaks for restroom use, stretching, and for the general convenience of the participants are to be reasonably accommodated, as should accommodations for hearing or reading. If any participant has physical, mental, or emotional impairments that may necessitate a specific accommodation, such impairments should be addressed in advance to determine the feasibility of a reasonable and appropriate accommodation.

Follow-up Communications

If the matter is not resolved at ADR-M or ADR-O, participants should consider whether further involvement of person conducting the session may be appropriate in working toward resolution. In the event of subsequent communications related to potential resolution, whether via e-mail, phone, or otherwise, those are confidential to the extent consistent with the MAP General Order and/or any ADR or other agreement with the person conducting the follow-up.

Compliance and Violations

Questions regarding the MAP General Order, or any concerns regarding alleged violations of the MAP General Order should be submitted to the MAP Director (preferably via e-mail at map@mow.uscourts.gov or by phone at 816-512-5080) sufficiently in advance of the ADR-M or ADR-O, absent exigent circumstances.

If any person conducting an ADR-M or ADR-O has concerns, including but not limited to a lack of participation or lack of preparation, the MAP Director should be contacted as soon as possible, even if it means delaying the session. If any other required participant in ADR-M or ADR-O has concerns regarding potential violations of the MAP General Order, such concerns should be reported to the MAP Director as soon as possible.

Questions or concerns requiring immediate attention should be reported to the MAP Office at 816-512-5080. Questions or concerns not requiring immediate attention should be submitted to the attention of the MAP Director at map@mow.uscourts.gov.

Questions or concerns regarding alleged violations of the MAP General Order shall not be filed with the Court nor reported to a third-party absent a requirement to do so (e.g., reporting to appropriate authorities a potential crime, etc.). In the event any filing is required in the Court that relates to any proceedings within MAP, appropriate measures should be taken to protect the public disclosure of such information and maintain confidentiality in accordance with the MAP General Order.

If the MAP Director becomes aware of any violation of these guidelines, the violation may be reported to the judge assigned to the case.

Laurel Stevenson
MAP Director