

GUIDELINES FOR VIRTUAL MEDIATIONS AND OTHER ADR SESSIONS¹ **CONDUCTED UNDER THE MEDIATION AND ASSESSMENT PROGRAM (MAP)**

In accordance with the provisions of III. B. of the MAP General Order, these guidelines are a supplement to the MAP General Order and apply to mediations and other ADR sessions in which any participant is participating virtually, either by Zoom or other appropriate audio-video connection. All participants in such sessions must be familiar with and abide by these guidelines. If the MAP Director becomes aware of any violation of these guidelines, the violation may be reported to the judge assigned to the particular case.

Technology

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

Zoom.us may be used to conduct online mediation and other ADR sessions. For mediations and ADR sessions conducted by Court personnel, Zoom.gov is typically used.

Download and Testing. Before the first scheduled mediation or other virtual ADR session using Zoom, participants should download and install the software and/or apps, including any necessary updates for participation. Use of Zoom in mediation and other ADR sessions 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 your connection BEFORE your mediation or other ADR session by hosting a Zoom meeting by yourself 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 WiFi as these often contain malware and/or present other security risks.

Waiting rooms. Where allowed by the platform, the person conducting the mediation or other ADR session may use the waiting room feature to help ensure only authorized persons are admitted to the mediation or ADR session. For participants, you may be in a waiting room until you are admitted by the host.

¹ Mediation is a form of alternative dispute resolution (ADR). These guidelines are applicable to mediations and other ADR under the MAP such as arbitration, early neutral evaluation, and other ADR sessions. A mediating judge or outside neutral may provide additional guidelines or protocols deemed appropriate for any mediation or other ADR session to the extent consistent with the MAP General Order and if applicable, any mediation agreement or other ADR session agreement. The in person attendance requirement under the MAP General Order (Amendment effective Nov. 2019) remains in effect. However, because of the COVID-19 pandemic, there is in effect an exemption to the in person participation requirement. Participants may agree to in person mediations and ADR sessions provided appropriate protocols for the health and safety of all participants are used.

Audio and Video. Both audio and video connections are required absent an unavoidable technological impairment. The person conducting the mediation or other ADR session should be able to see each participant during the mediation or other ADR session, and the person conducting the session may request that the screen be moved to be able to communicate directly with any individual participant. *Participants must employ good listening skills and avoid interruptions, cursing and personal attacks.*

Recording Prohibition. No one, nor anyone acting on behalf of any participant may record, via audio or video, any portion of a mediation or other ADR session absent express written consent from the MAP Director. 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 photographs of any type during mediation or other ADR session absent express permission from either the MAP Director or the person conducting the mediation or other ADR session.

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

Technology Issues. Despite best efforts, technology may fail to operate properly and a mediation or other ADR session 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 you have a protocol established for what to do in order 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 mediations and other ADR sessions tend to spend a majority of time in private breakout rooms/caucuses, much like in-person mediations and other ADR sessions. 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. All parties should carefully consider whether they wish to appear pro se 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 participate in the mediation or

other ADR session absent being excused by the MAP Director. The person conducting the mediation or other ADR session is not the attorney for any participant.

Privacy and Confidentiality. Only those individuals who have been identified in advance of the mediation or other ADR session may participate in the mediation or other ADR session. All participants agree that all communications related to the mediation or other ADR session which involve communications related to negotiations and settlement discussions, communicated in any medium, are private and confidential to the extent consistent with the MAP General Order and any applicable mediation agreement or other ADR session agreement. Participants must not text, IM, or otherwise engage in communications about the fact itself of mediation or other ADR session nor any settlement in connection with any such session that may be available to or shared with any third-party unless expressly consented to by all participants.

Avoiding Interruptions and Respectful Verbal and Non-Verbal Communication.

Participants must take all reasonable measures to avoid interruptions during mediation and other ADR sessions 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, if possible, 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 transmit hand gestures or non-verbal cues.

Except for the computer or mobile device upon which you are conducting your mediation or other ADR session, you should 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 ATV's, cars, boats, etc) nor travel in a vehicle during mediation or other ADR session.

Background. Neutral backgrounds are preferred. Avoid any background that will distract from the mediation or other ADR session, 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 mediation or other ADR session. 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 mediation or other ADR session.

Social Media and Internet Search Engines. During mediation and other ADR sessions, 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 or drugs during mediation or other ADR session is prohibited except as follows and only if use does not adversely impair a participant's mental state or unduly interfere with the mediation or other ADR session: 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 mediation or other ADR session is prohibited.

Snacks/Meals. Snacks and meals during mediation or other ADR session may be permissible if participants make appropriate efforts to avoid interference with the mediation or other ADR session. 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 with the person conducting the mediation or other ADR session to determine the feasibility of a reasonable and appropriate accommodation.

Follow-up Communications

If the matter is not resolved at mediation or other ADR session, participants should consider whether further involvement of the mediator or other neutral 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 mediation or other agreement with the person conducting the follow-up.

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² These guidelines are effective May 17, 2021 and are subject to change.