

JULY 18, 2023 NOTIFICATION

AMENDMENT TO THE MEDIATION AND ASSESSMENT PROGRAM (MAP) GENERAL ORDER EFFECTIVE AUGUST 1, 2023

On March 28, 2023, notification was sent regarding the adoption by the Court en banc for the United States District Court for the Western District of Missouri of an amendment (“Amendment”) to the MAP General Order effective August 1, 2023. This notification is a reminder of the upcoming changes to MAP.

The watermarked version of the Amendment¹ is on the Court’s website under the MAP tab. On August 1, 2023, the Amendment to the MAP General Order, a new List of Neutrals which will replace the current List of Mediators, and other applicable information will replace many of the existing documents on the Court’s website under the MAP Tab.

The Amendment does not change the requirement that parties engage in ADR within 75 days of the Rule 26 conference. The requirement was not changed because between 45-55% of cases initially assigned to MAP resolve early on, and the MAP Director maintains the discretion to modify the 75-day requirement upon a timely and appropriate request.

The Amendment clarifies that questions about or modifications to the MAP requirements should almost always be addressed to the MAP Office rather than seeking relief from the assigned judge. Common questions include ADR participation, deadlines, confidentiality, and/or sanctions.

The primary changes under the Amendment are as follows:

- 1) Assignment of cases either to Early-Stage ADR or Later-Stage ADR. Assignments to Early-Stage ADR are to Mediation (known as ADR-M), although an ADR Option Session (known as ADR-O) may be used if approved in advance by the Director or by any Western District Judge (Section II.A.).
- 2) Cases for Early-Stage ADR are randomly assigned to a Neutral in one of three categories: 1) MAP Director; 2) Outside Neutral (Category I or Category II); or 3) a Bankruptcy Judge or Magistrate Judge (known as a MAP Judge).
- 3) When cases are assigned to Category I, the parties select the Neutral (Section III.D.). When cases are assigned to Category II, the MAP Director selects the Neutral (Section III.E.).
- 4) Revising the provision for sanctions as follows: “The Judge assigned to the case or any other Judge who may be referred a case for consideration of sanctions under the Program may sanction any party and/or counsel for: 1) refusing to cooperate or timely cooperate in the Program; 2) failing to timely comply with requests consistent with the Program; 3) failing to participate in the Program consistent with the provisions and spirit of the General Order; and/or 4) failing to abide by any rule or guidelines applicable to any participant in the Program.”

¹ References herein to “Section” refer to the Section within the Amendment.

- 5) Allowing ADR participants to use technology as an alternative to in-person participation where: a) any Western District Judge has issued an exemption; b) the MAP Director provides a written exemption; or c) the assigned or designated Neutral has determined that each participant requesting to engage via technology ... will comply with ... any guidelines issued by the Court, and the purpose of the Program can be achieved by such participation.”

The Amendment includes several definitions, including “ADR Option Session” (ADR-O) and “Technology.” ADR-O is defined as follows: “A session other than a Mediation with a Neutral who may also be referred to as a Facilitator. An ADR-O may include the following: mini trials, summary jury trials, facilitative communications (FC), arbitration, neutral evaluation (NE) or early neutral evaluation (ENE), or any other recognized ADR process pursuant to any pilot program of this Court or otherwise recognized by the Administrative Office of the U.S. Courts. Binding arbitration may be used only when all parties agree in writing.”

The definition of “Technology” includes innovative “technology applications that when used appropriately can improve access to the judicial process. Use of technology in ADR (known as on-line dispute resolution/ODR or virtual or remote) in the Program shall be consistent with the privacy and security needs of the participants.... In the event of any virtual ADR-M or ADR-O, participants shall follow the Court’s guidelines for virtual sessions....”

If you have questions, please e-mail the MAP Office at map@mow.uscourts.gov or call 816-512-5080. Thank you.