

Kan. Sup. Ct. Rule 907

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Rule 907 MEDIATION

(a) Court-Ordered Mediation

(1) A mediator helps the parties reach a resolution. A mediator has no decision-making authority.

(2) Before ordering mediation, a district court must determine whether mediation is appropriate. In a domestic case, a district court must consider K.S.A. 23-3502.

(3) When referring a dispute to mediation, a district court must appoint a person who meets the qualifications under subsection (b).

(b) Qualifications of a Mediator

(1) Approved Mediator

. An approved mediator is an individual who has received a certificate of approval under Rule 911.

(2) Attorney Appointed as a Mediator

. A district court may appoint an individual licensed to practice law in the state of Kansas as a mediator under K.S.A. 5-509 and, in domestic cases, K.S.A. 23-3502(b). An attorney who has not received a certificate of approval under Rule 911 is not considered an approved mediator.

(c) Court Order

. If a district court determines that mediation is appropriate, the court must issue an order for mediation. The mediator must receive the written order specifying the dispute to be resolved before initiating mediation. The order must include a statement that mediation is a confidential process, subject to the exclusions described in K.S.A. 5-512(b) and, in domestic cases, K.S.A. 23-3505(b).

(d) Written Agreement

. A mediator must enter into a written agreement with each party. The written agreement must include the items listed in paragraphs (1) through (5).

(1) Fees and Costs

. The written agreement must state:

(A) an explanation of the fee each party must pay, including any fee associated with postponement, cancellation, or nonappearance;

(B) all mediation costs apportioned between the parties as ordered by the court or agreed to under K.S.A. 23-3506; and

(C) that the apportionment of mediation costs may be modified only by written agreement of the parties or court order.

(2) Method of Payment

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. The written agreement must explain the accepted payment methods, billing practices, and whether any fees or costs must be paid in advance.

(3) Confidentiality

. The written agreement must:

(A)state that mediation is a confidential process, subject to the exclusions described in K.S.A. 5-512 and, in domestic cases, K.S.A. 23-3505;

(B)state that an approved mediator is not permitted to disclose any matter that a party expects to be confidential unless all parties consent or the disclosure is required by law or other public policy;

(C)state that the participants waive the right to compel the mediator to testify or provide any materials concerning the mediation in any legal proceeding;

(D)explain the use of caucus or individual sessions and the degree to which they are confidential; and

(E)explain that an approved mediator may report to the court whether a party appeared at a scheduled mediation but the approved mediator must avoid communicating information about how the party acted regarding the mediation process, the merits of the case, or settlement offers.

(4) Subpoenas or Other Requests to Testify

. The written agreement must explain that if subpoenaed or otherwise noticed to testify, the approved mediator is required to inform the participants immediately to afford them an opportunity to quash the subpoena.

(5) Other Information

. The written agreement should include any other information the mediator deems necessary when providing mediation services.

(e) Domestic Violence Screening

. A mediator must screen and continually monitor each dispute for domestic violence. A mediator should adapt the methods used during mediation to avoid coercion or an imbalance of power and control between the parties. If a mediator does not have the competency to manage a dispute involving domestic violence, the mediator must not accept the mediation or must terminate an existing mediation.

(f) Termination of Mediation in a Domestic Case

. A mediator appointed in a domestic case under K.S.A. 23-3502 must terminate mediation if the mediator believes:

(1)continuation of the process would harm or prejudice one or more of the parties or the child; or

(2)the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(g) Reporting of CDRE Hours to the District Court

. If requested by a district court, an approved mediator must report to the district court the number of CDRE credit hours the mediator has attended in the current compliance period.

History

[New rule adopted effective January 1, 2020.]

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