

Kan. Sup. Ct. Rule 918

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Rule 918 ETHICS

(a) Application of Rule

This rule applies to approved individuals, approved programs, and approved mentor mediators. A violation of the ethics requirements under this rule constitutes grounds for disciplinary action, which may include suspension or revocation of approval status.

(b) Approved Individuals

All approved individuals must follow the ethics requirements in this subsection.

(1) Impartiality

(A)An approved individual must conduct any process under the Dispute Resolution Act in an impartial manner. Impartiality means freedom from favoritism or bias in word, action, or appearance and includes a commitment to assist all participants as opposed to any one individual. An approved individual employing a dispute resolution process that requires a recommendation does not, by itself, establish that the approved individual lacks impartiality.

(B)An approved individual must avoid any conduct that gives the appearance of partiality.

(i)An approved individual must not act with partiality or prejudice based on a participant's personal characteristics, background, values and beliefs, or any other reason.

(ii)An approved individual must neither give to nor accept from a party participating in a dispute resolution process a gift, favor, loan, or other item of value except for the purposes specified in subsection (b)(1)(B)(iii).

(iii)An approved individual may accept or give *de minimis* gifts or incidental items or services that are provided to facilitate a dispute resolution process or respect cultural norms if it does not raise questions about the approved individual's actual or perceived impartiality.

(iv)An approved individual must not coerce or improperly influence a party to make a decision.

(v)An approved individual must not intentionally or knowingly misrepresent or omit a material fact, law, or circumstance in a dispute resolution process.

(vi)An approved individual must not accept an engagement, provide any service, or perform an act outside the role of the approved individual that would compromise the integrity or impartiality in a dispute resolution process.

(C)An approved individual must withdraw from a dispute if unable to conduct the dispute resolution process in an impartial manner.

(2) Conflicts of Interest

(A)An approved individual must not serve in a dispute that presents a conflict of interest. A conflict of interest is an association or relationship that might create an impression of possible bias. A

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conflict of interest arises when a relationship between the approved individual and the participants or the subject matter of the dispute compromises or appears to compromise an approved individual's impartiality.

(B)An approved individual must disclose an actual or potential conflict of interest to the participants and, if applicable, to the court.

(C)An approved individual may recommend or refer services of other professionals to a party, but in making the recommendation or referral, the approved individual must avoid any actual or apparent conflict of interest. A conflict of interest under this subparagraph includes the giving or receiving of a commission, rebate, or similar remuneration by an approved individual for a recommendation or referral.

(D)Unless paragraph (E) applies, an approved individual may proceed with the dispute resolution process after disclosure of the actual or potential conflict if all participants agree in writing.

(E)If the conflict of interest casts serious doubt on the integrity of the process or impairs the approved individual's impartiality, the approved individual must withdraw from the dispute.

(F)An approved individual must avoid the appearance of a conflict of interest both during and after the dispute resolution process.

(3)**Competence**

. An approved individual must provide competent services to each party in a dispute resolution process. Competent services require the training, skill, knowledge, experience, thoroughness, and preparation reasonably necessary to provide effective services in the applicable process under the Dispute Resolution Act.

(4)**Confidentiality**

(A)An approved individual must maintain the reasonable expectations of the participants with regard to confidentiality.

(B)If an approved individual participates in teaching, research, or evaluation of the dispute resolution process, the approved individual must protect the anonymity of the participants and abide by the participants' reasonable expectations regarding confidentiality.

(5)**Quality of the Process**

(A)An approved individual must conduct any process under the Dispute Resolution Act and related Supreme Court Rules in a manner consistent with principles of diligence and procedural fairness.

(B)An approved individual must define the dispute resolution process being conducted so that participants understand its scope and how it may differ from other dispute resolution processes. When relevant, an approved individual must distinguish the dispute resolution process from therapy or counseling.

(C)An approved individual must discuss the issue of separate sessions, including whether and under what circumstances the approved individual may meet alone with a participant or with a third party.

(D)An approved individual must strive for full disclosure and development of relevant factual information in a process employed under the Dispute Resolution Act.

(E)At the beginning of a dispute resolution process, an approved individual must inform participants that the approved individual cannot represent any participant in the process.

(F)An approved individual must inform the participants that no participant is receiving legal representation from the dispute resolution provider, that the approved individual is not providing the

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services attorneys typically provide, and that no attorney-client relationship exists. The approved individual should inform each participant of the participant's right to seek independent legal counsel for advice throughout the process and before any agreement is signed.

(G) An approved individual must not permit the individual's behavior to be guided by a desire for a higher settlement rate.

(H) An approved individual must withdraw from a dispute resolution process when incapable of serving.

(6) Advertising and Solicitation

(A) An approved individual must be truthful in advertising.

(B) An approved individual must not include any promises or guarantee of results in the approved individual's communications, including business cards, stationary, or electronic communications.

(C) An approved individual must obtain written permission prior to communicating the name of any participant in promotional materials or through other forms of communication.

(7) Fees and Other Charges

(A) An approved individual must provide true and complete written information to the participants about fees, expenses, and any other actual or potential charges that may be incurred in connection with the dispute resolution process.

(B) A fee must be reasonable, considering various factors such as the type of dispute resolution service, complexity of the matter, expertise of the approved individual, time required, and rates customary in the community.

(C) An approved individual must return any unearned fees to the participants.

(D) An approved individual must not enter into a fee agreement that is contingent on the result of the dispute resolution process or the amount of the settlement.

(E) An approved individual must maintain records necessary to support any charge for services and expenses.

(8) Obligations to the Dispute Resolution Profession

. An approved individual has a duty to promote and improve the practice of dispute resolution.

(9) Dual, Multiple, or Sequential Roles

. An approved individual must not serve in dual, multiple, or sequential roles in a case that may create a conflict of interest, unless all participants in the dispute give informed written consent.

(10) Self Reporting Professional Misconduct

. An approved individual must immediately report to the director any professional misconduct that may affect the individual's approval. It is professional misconduct to:

(A) commit a criminal act that reflects adversely on the approved individual's honesty or trustworthiness;

(B) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) engage in conduct that is prejudicial to the administration of justice or the administration of dispute resolution in Kansas; or

(D) engage in any other conduct that adversely reflects on an approved individual's character, fitness, and general qualifications to practice dispute resolution.

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(11) Responsibility to Supervise

. An approved individual must make reasonable efforts to ensure that all staff supervised by the approved individual conform to the ethics requirements in this rule.

(12) Self-Determination

. If an approved individual is providing mediation, the approved individual must recognize that mediation is based on the principle of self-determination by the participants. Self-determination requires the mediation process rely on the ability of the participants to reach a voluntary and uncoerced agreement. To assure self-determination:

(A)a mediator must provide adequate opportunity for each party in the mediation to participate in discussions;

(B)a mediator must safeguard the participants' discretion to decide when and under what conditions they will reach an agreement or terminate mediation, unless otherwise ordered by statute or court order; and

(C)a mediator must terminate or suspend the mediation or postpone a session if a party is unable to participate due to drug, alcohol, or other physical or mental capacity.

(c) Approved Programs

. An approved program must follow the ethics requirements prescribed for approved individuals unless otherwise specified in this subsection.

(1) Administrative Oversight of Approved Individuals and Staff

. An approved program must make reasonable efforts to ensure that all employees of the approved program, including approved individuals, conform to the ethics requirements in this rule.

(2) Court-Appointed Dispute Resolution Services

. Court-appointed dispute resolution services provided by an approved program must be conducted by an approved individual who has received approval to perform that particular dispute resolution process.

(3) Approved Training Courses and CDRE Presentations

. An approved program must ensure its approved training courses and CDRE presentations:

(A)meet the requirements prescribed by the Supreme Court Rules adopted under the Dispute Resolution Act; and

(B)are presented by a person or persons qualified by practical or academic experience to present the subject in accordance with Rule 914.

(d) Approved Mentor Mediators

(1)An approved mentor mediator must follow the ethics requirements prescribed for approved individuals unless otherwise specified in this subsection.

(2)An approved mentor mediator must provide competent instruction to a prospective mediator. Competent instruction requires a mentor mediator to coach prospective mediators and share knowledge and expertise.

History

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[New rule adopted effective January 1, 2020.]

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