

**FILED**

**JUL 01 2019**

**DOUGLAS T. SHIMA  
CLERK OF APPELLATE COURTS**

2019 SC 66

**IN THE SUPREME COURT OF THE STATE OF KANSAS**

**ORDER**

**RULES RELATING TO ~~MEDIATION~~ DISPUTE RESOLUTION**

Effective January 1, 2020, Supreme Court Rules 901-904 and the Mediation Appendix and Preamble are hereby repealed and the following Rules 905-922 are hereby adopted and supersede the prior provisions.

**Rule 905**

**PREFATORY RULE**

- (a) **Rules Adopted.** The following Supreme Court Rules numbered 905 through 922 are effective January 1, 2020.
- (b) **Repeal of Former Rules.** Supreme Court rules 901 through 904 and the Mediation Appendix and Preamble are repealed as of January 1, 2020.
- (c) **Authority.** For authority, see K.S.A. 5-501 et seq. and K.S.A. 23-3501 et seq.
- (d) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.
- (e) **Applicability.** Unless otherwise indicated, these rules apply to the following:
  - (1) an individual seeking approval to provide dispute resolution as an approved mediator, approved domestic conciliator, approved parenting coordinator, or approved case manager;
  - (2) an organization or entity seeking to be recognized as an approved program to provide at least one of the following:
    - (A) dispute resolution;
    - (B) approved training courses; or

- (C) continuing dispute resolution education;
  - (3) an individual seeking to become an approved mentor mediator to provide a practicum for prospective mediators;
  - (4) an approved mediator, approved domestic conciliator, approved parenting coordinator, approved case manager, approved program, or approved mentor mediator; and
  - (5) any dispute—other than litigation—referred by a court to dispute resolution.
- (f) **Forms.** The director of dispute resolution may provide and require use of standardized forms to implement these rules.

## Rule 906

### DEFINITIONS

- (a) **General.** The definitions in subsection (b) apply when the words and phrases defined are used in these rules.
- (b) **Definitions.**
  - (1) **"Approval"** means the program or individual has applied for inclusion on a list of programs and individuals and has been found to have met the requirements and guidelines to be considered for the receipt of public funding or to be recommended to the court as an approved service provider.
  - (2) **"Approved individual"** means a neutral person whom the director has approved under Rule 911. The term includes an approved mediator, approved domestic conciliator, approved parenting coordinator, and approved case manager.
  - (3) **"Approved mentor mediator"** means a neutral person whom the director has approved under Rule 912.
  - (4) **"Approved program"** means an organization or entity that the director has approved under Rule 913.
  - (5) **"Case management"** means a nonconfidential process in which a court-appointed neutral case manager assists the parties by providing a procedure,

other than mediation, that facilitates negotiation of a plan for child custody, residency, or parenting time or in which the case manager makes recommendations to the court under K.S.A. 23-3507.

- (6) "**Case manager**" means a neutral person who assists the parties through case management or limited case management and meets the qualifications under K.S.A. 23-3508 and Rule 911.
- (7) "**CDRE**" means continuing dispute resolution education as described in Rule 916.
- (8) "**Chairperson**" means the person elected as chairperson of the advisory council on dispute resolution under K.S.A. 5-504.
- (9) "**Council**" means the advisory council on dispute resolution under the Dispute Resolution Act and Rule 1501.
- (10) "**Director**" means the director of dispute resolution as established by K.S.A. 5-503.
- (11) "**Dispute resolution**" means a process by which the parties involved in a dispute voluntarily agree or are referred or ordered by a court to enter into discussion and negotiation with the assistance of a neutral person.
- (12) "**Dispute Resolution Act**" means the Act described in K.S.A. 5-501 et seq.
- (13) "**Domestic conciliation**" means a nonconfidential process in which a neutral person assists the parties in reconciliation efforts by: improving communication; reconciling differences; and helping the parties develop solutions to a dispute, complaint, or conflict.
- (14) "**Domestic conciliator**" means a neutral person with no decision-making authority who assists the parties through domestic conciliation and whom the director has approved under Rule 911.
- (15) "**Limited case management**" is case management that is restricted as to issue and duration under Rule 910(f).
- (16) "**Mediation**" means a confidential process in which a third party—who has no decision-making authority and is impartial to the issues being discussed—assists the parties in defining the issues in dispute, facilitates communication between the parties, and assists the parties in reaching a resolution.

- (17) **"Mediator"** means a neutral person with no decision-making authority who assists the parties in mediation and meets the qualifications under Rule 911 or, in domestic cases, K.S.A. 23-3502.
- (18) **"Neutral person"** or "neutral" means an impartial third party who intervenes in a dispute at the request of the parties or the court to facilitate settlement or resolution of a dispute.
- (19) **"Parenting coordination"** means a non-confidential, child-focused process in which a neutral person assists the parties with implementation of court orders or daily parenting matters through: assessing parties' parenting skills and the child's needs; educating the parties regarding the needs of the child; coordinating professional services for the family; and assisting the parties in reducing harmful family conflicts.
- (20) **"Parenting coordinator"** means a neutral person who assists the parties through parenting coordination and whom the director has approved under Rule 911.
- (21) **"Practicum"** means a supervised practical application of mediation skills in accordance with Rule 915. The term includes co-mediation and mediation simulation.

## **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.** 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.

## Rule 908

### DOMESTIC CONCILIATION

(a) **Court-Ordered Domestic Conciliation.**

- (1) A domestic conciliator helps the parties reach a resolution and, if ordered, provides a report to the court. A domestic conciliator has no decision-making authority.
- (2) Before ordering domestic conciliation, a district court must determine whether domestic conciliation is appropriate.
- (3) When referring a dispute to domestic conciliation, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Domestic Conciliator.**

- (1) **Approved Domestic Conciliator.** An approved domestic conciliator is an individual who has received a certificate of approval under Rule 911.
- (2) **Attorney Appointed as a Domestic Conciliator.** A district court may appoint an individual licensed to practice law in Kansas as a domestic conciliator under K.S.A. 5-509. Before appointing an attorney to be a domestic conciliator, a district court must consider the attorney's knowledge and experience in domestic relations cases. An attorney who has not received a certificate of approval under Rule 911 is not considered an approved domestic conciliator.

(c) **Court Order.** If a district court determines that domestic conciliation is appropriate, the court must issue an order for domestic conciliation. The domestic conciliator must receive the written order specifying the dispute to be resolved before initiating conciliation. The order must include the provisions listed in paragraphs (1) through (5).

- (1) **Not a Confidential Process.** The order must include a statement explaining that domestic conciliation is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the domestic

conciliator has the responsibility to report to the court and to other authorities as the court order directs.

- (2) **Written Report.** The order must specify:
    - (A) whether the domestic conciliator must file a written report with the court; and
    - (B) any information the domestic conciliator must include in a filed report.
  - (3) **Communication with Each Party.** The order must specify whether the domestic conciliator may communicate individually with each party.
  - (4) **Communication with a Nonparty.** The order must specify whether the domestic conciliator may communicate with a nonparty. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.
  - (5) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including a retainer amount or an apportionment of domestic conciliation costs between the parties. Any fee for domestic conciliation should be based on the actual time expended by the domestic conciliator relating to the dispute between the parties, unless the court directs otherwise. A fee for domestic conciliation must not include costs for professional time wholly unrelated to the purpose of appointment.
- (d) **Written Agreement.** A domestic conciliator must enter into a written agreement with each party. The written agreement should include the domestic conciliator's expectations and procedures; billing practices, method of payment, and use of collections; and any other information the domestic conciliator deems necessary when providing conciliation services.
  - (e) **Domestic Violence Screening.** A domestic conciliator must screen and continually monitor each dispute for domestic violence. A domestic conciliator should adapt the methods used during domestic conciliation to avoid coercion or an imbalance of power and control between the parties. If a domestic conciliator does not have the competency to manage a dispute involving domestic violence, the domestic conciliator must not accept the domestic conciliation or must terminate an existing domestic conciliation.
  - (f) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a domestic conciliator if the court finds:



- (1) loss of neutrality by the domestic conciliator;
- (2) nonpayment by a party;
- (3) lack of cooperation by a party;
- (4) threat to a party or the domestic conciliator; or
- (5) any other reason found by the district court.

(g) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, an approved domestic conciliator must report to the district court the number of CDRE credit hours the domestic conciliator has attended in the current compliance period.

## **Rule 909**

### **PARENTING COORDINATION**

(a) **Court-Ordered Parenting Coordination.**

- (1) A parenting coordinator helps the parties implement court orders and with daily parenting matters. A parenting coordinator must not make decisions that would change legal or physical custody from one parent to the other or substantially change the parenting plan.
- (2) Before ordering parenting coordination, a district court must determine whether parenting coordination is appropriate.
- (3) An appropriate case for parenting coordination must involve the following:
  - (A) the child's parents are persistently in conflict with one another over child-related issues;
  - (B) parenting coordination is in the best interests of the child; and
  - (C) one or more of the following circumstances exist:
    - (i) parental problem-solving or communication is ineffective;
    - (ii) a parent has a history of substance abuse;

- (iii) a history of domestic violence is present;
  - (iv) concerns exist about the mental health or behavior of a parent;
  - (v) a child has special needs; or
  - (vi) the district court otherwise determines parenting coordination is appropriate.
- (4) When referring a dispute to parenting coordination, a district court must appoint a person who meets the qualifications under subsection (b).

**(b) Qualifications of a Parenting Coordinator.**

- (1) **Approved Parenting Coordinator.** An approved parenting coordinator is an individual who has received a certificate of approval under Rule 911.
- (2) **Attorney Appointed as a Parenting Coordinator.** A district court may appoint an individual licensed to practice law in Kansas as a parenting coordinator under K.S.A. 5-509. Before appointing an attorney to be a parenting coordinator, a district court must consider the attorney's knowledge and experience in domestic relations cases. An attorney who has not received a certificate of approval under Rule 911 is not considered an approved parenting coordinator.

**(c) Court Order.** If a district court determines that parenting coordination is appropriate, the court must issue an order naming the parenting coordinator appointed to the case. The parenting coordinator must receive the written order before initiating parenting coordination. The order must include the provisions listed in paragraphs (1) through (5).

- (1) **Appointment of Parenting Coordinator.** The order must:
  - (A) specify the dispute to be resolved; and
  - (B) specify the parenting coordinator's term of appointment under the following guidelines:
    - (i) the term of appointment for a parenting coordinator must not exceed 24 months; and

- (ii) at the end of a parenting coordinator's term of appointment, if the district court determines that parenting coordination is still appropriate, the court may reappoint the same parenting coordinator under this rule.
- (2) **Not a Confidential Process.** The order must include a statement explaining that parenting coordination is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the parenting coordinator has the responsibility to report to the court and to other authorities as the court order directs.
- (3) **Written Reports or Recommendations.** The order must specify:
  - (A) whether the parenting coordinator must file written reports or recommendations with the court; and
  - (B) any information the parenting coordinator must include in a filed report or recommendation.
- (4) **Communication with each Party.** The order must specify whether the parenting coordinator may communicate individually with each party.
- (5) **Communication with a Nonparty.** The order must specify whether the parenting coordinator may communicate with a nonparty, such as any person involved with the family, including a stepparent, the custody evaluator, an attorney, a school official, a physical or mental health provider, or any person the parenting coordinator determines to have a significant role in contributing to or resolving the dispute between the parties. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.
- (6) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including any prepayment amount or an apportionment of parenting coordination costs between the parties. Any fee for parenting coordination should be based on the actual time expended by the parenting coordinator relating to the dispute between the parties unless the court directs otherwise. A fee for parenting coordination services must not include costs for professional time wholly unrelated to the scope of appointment.
- (d) **Written Agreement.** A parenting coordinator must enter into a written agreement with each party. The written agreement should include the parenting coordinator's

expectations and procedures; billing practices, method of payment, and use of collections; and any other information the parenting coordinator deems necessary when providing parenting coordination services.

- (e) **Domestic Violence Screening.** A parenting coordinator must screen and continually monitor each dispute for domestic violence. A parenting coordinator should adapt the methods used during parenting coordination to avoid coercion or an imbalance of power and control between the parties. If a parenting coordinator does not have the competency to manage a dispute involving domestic violence, the parenting coordinator must not accept the parenting coordination or must terminate an existing parenting coordination.
- (f) **Objections to the Report or Recommendations.** A party may object to a parenting coordinator's report or recommendations by filing a motion with the district court.
- (g) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a parenting coordinator if the court finds:
  - (1) loss of neutrality that prevents objectivity by the parenting coordinator;
  - (2) nonpayment by a party;
  - (3) lack of cooperation by a party;
  - (4) threat to a party or the parenting coordinator;
  - (5) retirement or case load reduction by a parenting coordinator; or
  - (6) any other reason found by the district court.
- (h) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, an approved parenting coordinator must report to the district court the number of CDRE credit hours the parenting coordinator has attended in the current compliance period.

## Rule 910

### CASE MANAGEMENT

(a) **Court-Ordered Case Management.**

- (1) A case manager helps the parties by providing a procedure, other than mediation, that facilitates negotiation of a plan for child custody, residency, or parenting time. If the parties are unable to reach an agreement, the case manager must make recommendations to the court.
- (2) Before ordering case management, a district court must determine whether case management is appropriate.
- (3) An appropriate case for case management must involve at least one of the circumstances identified in K.S.A. 23-3508(b).
- (4) When referring a dispute to case management, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Case Manager.** An approved case manager is an individual who:

- (1) meets the requirements of K.S.A. 23-3508(d)(1)(A) or (d)(1)(B); and
- (2) has received a certificate of approval under Rule 911.

(c) **Court Order.** If a district court determines that case management is appropriate, the court must issue an order naming the case manager appointed to the case. The case manager must receive the written order before initiating case management. The order must include the provisions listed below.

- (1) **Appointment of Case Manager.** The order must:
  - (A) specify the dispute to be resolved; and
  - (B) specify the case manager's term of appointment under the following guidelines:
    - (i) the term of appointment for any case manager must not exceed 36 months; but

- (ii) at the end of a case manager's term of appointment, if the district court determines that case management is still appropriate, the court may reappoint the same case manager under this rule and K.S.A. 23-3508.
- (2) **Not a Confidential Process.** The order must include a statement explaining that case management is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the case manager has the responsibility to report to the court and to other authorities under K.S.A. 23-3509 and as the court order directs.
- (3) **Written Reports or Recommendations.** The order must specify:
  - (A) whether the case manager must file written reports or recommendations with the court; and
  - (B) any information the case manager must include in a filed report or recommendations under K.S.A. 23-3509.
- (4) **Communications with Each Party.** The order must specify whether the case manager may communicate individually with each party.
- (5) **Communication with a Nonparty.** The order must specify whether the case manager may communicate with a nonparty, such as any person involved with the family, including a stepparent, the custody evaluator, an attorney, a school official, a physical or mental health provider, or any person the case manager determines to have a significant role in contributing to or resolving the dispute between the parties. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.
- (6) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including any prepayment amount or an apportionment of case management costs between the parties, and address the case manager's duty to notify the court when a party fails to meet the financial obligations of the case management process under K.S.A. 23-3509. Any fee for case management should be based on the actual time expended by the case manager relating to the dispute between the parties unless the court directs otherwise. A fee for case management services must not include costs for professional time wholly unrelated to the scope of appointment.

- (d) **Written Agreement.** A case manager must enter into a written agreement with each party. The written agreement should include the case manager's expectations and procedures; billing practices, method of payment, and use of collections; and any other information the case manager deems necessary when providing case management services.
- (e) **Domestic Violence Screening.** A case manager must screen and continually monitor each case for domestic violence. A case manager should adapt the methods used during case management to avoid coercion and an imbalance of power and control between the parties. If the case manager does not have the competency to manage a dispute involving domestic violence, the case manager must not accept the case management or must terminate an existing case management.
- (f) **Limited Case Management.** Limited case management is subject to all Supreme Court Rules and laws governing case management, except:
  - (1) the district court may restrict the case manager to resolving specified issues; and
  - (2) the appointment of a case manager terminates when a negotiated agreement has been filed with the district court or the case manager has filed a written report, including any recommendations, with the district court.
- (g) **Objections to a Report or Recommendations.** A party may object to a case manager's report or recommendations by filing a motion under K.S.A. 23-3509.
- (h) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a case manager under K.S.A. 23-3509(b).
- (i) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, a case manager must report to the district court the number of CDRE credit hours the case manager has attended in the current compliance period.

### **Rule 911**

#### **INDIVIDUAL APPROVAL AND RENEWAL—MEDIATOR, DOMESTIC CONCILIATOR, PARENTING COORDINATOR, OR CASE MANAGER**

- (a) **Application for Approval.** An individual seeking approval as a mediator, domestic conciliator, parenting coordinator, or case manager must submit an application to the director. The application must include:

- (1) documentation of the information required under K.S.A. 5-507(a), unless the applicant is connected with a court;
  - (2) documentation that the applicant has satisfied the applicable requirements under subsection (c);
  - (3) written letters of recommendation from at least two people—other than an approved mentor mediator—who will attest to the applicant's character and capacity to serve as a mediator based on temperament, experience, and the requisite mental and emotional fitness to engage in the active and continuous practices of dispute resolution;
  - (4) documentation of the applicant's sliding scale system for assessing fees under K.S.A. 5-508;
  - (5) a verified statement regarding the applicant's criminal history;
  - (6) a verified statement that the applicant agrees to comply with these rules;
  - (7) the application fee in an amount determined by the Supreme Court unless:
    - (A) the applicant is a judicial branch employee who will provide dispute resolution for the judicial branch or other state agencies; or
    - (B) the application fee has been waived on written request by an applicant who will not receive compensation for providing dispute resolution; and
  - (8) any other information the director requests.
- (b) **Waiver of Requirements.** If an applicant does not meet a requirement listed in subsection (a), the applicant may request in writing that the director waive the requirement. On receipt of the request, the director must:
- (1) grant the request and waive the requirement;
  - (2) request more information from the applicant; or
  - (3) deny the request.
- (c) **Application Prerequisites.** An applicant must meet the applicable requirements in paragraphs (1) through (4).



- (1) **Mediator.** An applicant for a certificate of approval as a mediator must meet the requirements in subparagraphs (A) and (B) or qualify for dual approval under subparagraph (C).
  - (A) **Training and Experience.**
    - (i) **Core Mediation.** To mediate disputes such as neighborhood, community, small claims, or other similar matters, the applicant must complete 16 hours of approved core mediation training.
    - (ii) **Domestic Mediation.** To mediate child custody, residency, visitation, parenting time, division of property, or other issues under K.S.A. 23-3501, the applicant must be an approved core mediator and complete 24 hours of approved domestic mediation training.
    - (iii) **Parent-Adolescent Mediation.** To mediate parent-adolescent disputes, the applicant must be an approved core mediator and complete 16 hours of approved parent-adolescent mediation training.
    - (iv) **General Civil Mediation.** To mediate general civil disputes, other than small claims, the applicant must be an approved core mediator and complete 24 hours of approved general civil mediation training.
    - (v) **Juvenile Dependency Mediation.** To mediate juvenile dependency disputes, the applicant must be an approved core mediator; complete 24 hours of approved juvenile dependency mediation training; and meet one of the following requirements:
      - (aa) have a bachelor's degree or higher in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially related to family relationships;
      - (bb) have a juris doctor degree with experience in the field of juvenile law or family law;
      - (cc) be an approved domestic or parent-adolescent mediator with at least three years of experience in

mediation, counseling, psychotherapy, social work, or any combination thereof, preferably in a setting related to juvenile dependency court or domestic relations; or

(dd) have status as a court services officer practicing in juvenile dependency court.

(B) **Practicum.** The applicant must participate in an approved practicum under Rule 915 in the area for which the applicant received approved mediation training. The practicum must be completed within one year of completing the relevant training requirement under paragraph (A).

(C) **Dual Approval.** An applicant may qualify as an approved core mediator and an approved domestic mediator, parent-adolescent mediator, general civil mediator, or juvenile dependency mediator in a single application if the applicant completes the following:

(i) core mediation training under paragraph (A)(i);

(ii) additional mediation training under paragraph (A)(ii), (iii), (iv), or (v); and

(iii) a practicum in the mediation area selected under paragraph (C)(ii).

(2) **Domestic Conciliator.** An applicant for a certificate of approval as a domestic conciliator must meet the following requirements:

(A) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);

(B) have mediated at least 10 domestic cases; and

(C) have completed six hours of approved domestic conciliation training.

(3) **Parenting Coordinator.** An applicant for a certificate of approval as an approved parenting coordinator must meet the following requirements:

(A) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);

(B) have mediated at least 10 domestic cases; and

- (C) have completed 16 hours of approved parenting coordination training.
- (4) **Case Manager.** An applicant for a certificate of approval as an approved case manager must meet the following requirements:
  - (A) comply with the requirements of K.S.A. 23-3508(d)(1)(A) or (d)(1)(B);
  - (B) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);
  - (C) have mediated at least three domestic cases; and
  - (D) have completed 16 hours of approved case management training.
- (d) **Application Review Process.**
  - (1) **Director's Decision.**
    - (A) On receipt of an application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).
    - (B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.
    - (C) Before the approval or denial of an application, the director may require the applicant to obtain additional training or to submit more information, including any information relevant to the applicant's character, fitness, and general qualifications.
  - (2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.
- (e) **Renewal of Approval.** An approved mediator, domestic conciliator, parenting coordinator, or case manager, including a mediator approved at the time Rule 902 was repealed, must annually apply for approval renewal. The renewal application and fee must be postmarked by January 30. Failure to submit the renewal

application and fee under this subsection may result in nonrenewal of approval status.

- (1) **Renewal Application.** The application for renewal must include:
    - (A) proof of compliance with the CDRE credit requirements under Rule 916;
    - (B) the number of cases—and a mediator also must submit the types of cases—handled in the prior year;
    - (C) a verified statement that the applicant agrees to comply with these rules;
    - (D) a renewal application fee in an amount determined by the Supreme Court unless:
      - (i) the applicant is a judicial branch employee who provides dispute resolution for the judicial branch or other state agencies; or
      - (ii) the renewal fee has been waived for an applicant who will not receive compensation for providing dispute resolution; and
    - (E) any other information the director requests.
  - (2) **Waiver of Requirements.** If an applicant has specialized experience or training but does not meet a requirement listed in paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the request, the director must:
    - (A) grant the request and waive the requirement;
    - (B) request more information from the applicant; or
    - (C) deny the request.
  - (3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).
- (f) **Nonrenewal.** An individual who does not meet the renewal requirements of subsection (e) must apply for approval under subsection (a).

- (g) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.
- (h) **List of Individuals Approved.** The director must keep a public listing of individuals approved under this rule, separated by category. The list must include information for each approved individual, such as types of services, fees, and region of service. An approved individual may opt out of the public listing.

## Rule 912

### INDIVIDUAL APPROVAL AND RENEWAL—MENTOR MEDIATOR

- (a) **Application for Approval.** An individual seeking approval as a mentor mediator must submit an application to the director. The application must include:
  - (1) documentation that the applicant has satisfied the requirements under subsection (c);
  - (2) written letters of recommendations from at least two people who will attest to the applicant's character and capacity to serve as a mentor mediator based on temperament, experience, and the requisite mental and emotional fitness to engage in the active and continuous practice of mentoring mediators;
  - (3) a verified statement that the applicant agrees to comply with these rules;
  - (4) the application fee in an amount determined by the Supreme Court unless:
    - (A) the applicant is a judicial branch employee who will act as a mentor mediator for the judicial branch or other state agencies; or
    - (B) the application fee has been waived on written request for an applicant who will not receive compensation for acting as a mentor mediator; and
  - (5) any other information the director deems necessary.
- (b) **Waiver of Requirements.** If an applicant does not meet a requirement listed in subsection (a), the applicant may request in writing that the director waive the requirement. On receipt of the written request, the director must:
  - (1) grant the written request and waive the requirement;

- (2) request more information from the applicant; or
  - (3) deny the written request.
- (c) **Application Prerequisites.** An applicant for a certificate of approval as a mentor mediator must:
- (1) be an approved mediator;
  - (2) have served as lead mediator for ten mediation cases in the area in which the mediator is seeking approval as a mentor mediator;
  - (3) have completed a minimum of 40 hours of CDRE after becoming a mediator; and
  - (4) have either:
    - (A) completed six hours of approved mentor mediation training; or
    - (B) completed a mentor mediator course presented prior to the effective date of this rule and served as a mentor mediator on or before the effective date of this rule. The applicant must provide to the director a copy of the course agenda, hours completed, and proof of attendance.
- (d) **Application Review Process.**
- (1) **Director's Decision.**
    - (A) On receipt of an application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).
    - (B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.
    - (C) Before the approval or denial of an application, the director may require the applicant to obtain additional training or to submit more information, including any information relevant to the applicant's character, fitness, and general qualifications.

- (2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.
- (e) **Renewal of Approval.** An approved mentor mediator must annually apply for approval renewal. The renewal application and fee must be postmarked by January 30. Failure to submit the renewal application and fee under this subsection may result in nonrenewal of approval status.
- (1) **Renewal Application.** The application for renewal must include:
- (A) proof of compliance with the CDRE credit requirements under Rule 916;
  - (B) the number of prospective mediators mentored in the prior year;
  - (C) a verified statement that the applicant agrees to comply with these rules;
  - (D) a renewal application fee in an amount determined by the Supreme Court unless:
    - (i) the applicant is a judicial branch employee who acts as an approved mentor mediator for the judicial branch or other state agencies; or
    - (ii) the renewal fee has been waived for an applicant who will not receive compensation for acting as an approved mentor mediator; and
  - (E) any other information the director requests.
- (2) **Waiver of Requirements.** If an applicant has specialized experience or training but does not meet a requirement under paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director may:
- (A) grant the written request and waive the requirement;
  - (B) request more information from the applicant; or
  - (C) deny the written request.

- (3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).
- (f) **Nonrenewal.** An individual who does not meet the renewal requirements of subsection (e) must apply for approval under subsection (a).
- (g) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.
- (h) **List of Approved Mentor Mediators.** The director must keep a public listing of approved mentor mediators that includes information for each approved individual, such as types of practicums and fees. An approved mentor mediator may opt out of the public listing.

### **Rule 913**

#### **PROGRAM APPROVAL AND RENEWAL**

- (a) **Application for Approval.** An organization or entity seeking approval as a program under the Dispute Resolution Act must submit an application to the director. The application must include:
  - (1) documentation of the information required under K.S.A. 5-507(a), unless the applicant is connected with a court;
  - (2) identification of the dispute resolution services, approved training courses, or CDRE that will be provided by the applicant;
  - (3) documentation of one of the following:
    - (A) the applicant's sliding scale system for assessing fees under K.S.A. 5-508 if the applicant will be providing dispute resolution services;
    - (B) a verified statement that the applicant's courses will meet the requirements of Rule 914 if the applicant will be providing approved training courses; or
    - (C) a verified statement that the applicant's CDRE presentations will meet the requirements of Rule 916 if the applicant will be providing CDRE;



- (4) the application fee in an amount determined by the Supreme Court;
  - (5) a verified statement that the applicant agrees to comply with these rules;  
and
  - (6) any other information the director deems necessary.
- (b) **Waiver of Requirements.** If an applicant program does not meet a requirement listed in subsection (a), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director must:
- (1) grant the written request and waive the requirement;
  - (2) request more information from the applicant; or
  - (3) deny the written request.
- (c) **Application Review Process.**
- (1) **Director's Decision.**
    - (A) On receipt of the application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).
    - (B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.
    - (C) Before the approval or denial of an application, the director may require the applicant program to submit more information.
  - (2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.
- (d) **Renewal of Approval.** An approved program must annually apply for approval renewal. The application and fee must be postmarked by January 30. Failure to submit the renewal application and fee under this subsection may result in nonrenewal of approval status.

- (1) **Renewal Application.** The application for renewal must include:
    - (A) an annual report that:
      - (i) complies with K.S.A. 5-507(c);
      - (ii) summarizes the dispute resolution services or approved training courses that have been provided by the applicant in the prior year; and
      - (iii) identifies the number, types, dates, agenda, and approved education hours or CDRE credit provided for courses approved in the prior year;
    - (B) if the applicant provides approved training courses or CDRE, a verified statement by the applicant that its courses will meet the requirements under Rules 914 and 916;
    - (C) a verified statement that the applicant agrees to comply with these rules;
    - (D) a renewal application fee in an amount determined by the Supreme Court; and
    - (E) any other information the director requests.
  - (2) **Waiver of Requirements.** If an applicant does not meet a requirement listed in paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director must:
    - (A) grant the written request and waive the requirement;
    - (B) request more information from the applicant program; or
    - (C) deny the written request.
  - (3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).
- (e) **Nonrenewal.** A program that does not meet the renewal requirements of subsection (d) must apply for approval under subsection (a).

- (f) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.
- (g) **List of Approved Programs.** The director must keep a public listing of approved programs that includes information for each approved program, such as types of services, fees, and region of service. An approved program may opt out of the public listing.

## **Rule 914**

### **PRIMARY TRAINING COURSES**

- (a) **General.** An individual seeking approval under Rule 912 or 913 must have completed approved training courses before submitting an application. The prerequisite training courses must be approved by the director and must meet the applicable requirements under subsection (b).
- (b) **Training Course Requirements.**
  - (1) **Core Mediation.** An approved core mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a mediator; mediation process, practice, and techniques; rules and laws governing mediation; communication skills; neutrality; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.
  - (2) **Domestic Mediation.** An approved domestic mediation course must be presented as an integrated and unified training module that includes the following components in accordance with K.S.A. 23-3502(b)(3) and (4): role and duties of a domestic mediator; domestic mediation process, practice, and techniques; rules and laws governing domestic mediation; the Kansas judicial system and procedure used in domestic relations cases; child development; clinical issues relating to children; the effects of divorce on children; the psychology of families in separation and divorce; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; other community resources to which parties can be referred for assistance; role playing; and ethics.
  - (3) **Parent-Adolescent Mediation.** An approved parent-adolescent mediation course must be presented as an integrated and unified training module that

includes the following components: role and duties of a parent-adolescent mediator; parent-adolescent mediation process, practice, and techniques; rules and laws governing parent-adolescent mediation; Kansas family law as it relates to parent-adolescent mediation; child and adolescent development; the parent-adolescent relationship; family systems; interviewing children; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.

- (4) **General Civil Mediation.** An approved general civil mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a general civil mediator; general civil mediation process, practice, and techniques; rules and laws governing general civil mediation; the Kansas civil litigation system and procedure; overcoming deadlock; evaluation of cases; writing summaries of understandings or agreements of the parties; role playing; and ethics.
- (5) **Juvenile Dependency Mediation.** An approved juvenile dependency mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a juvenile dependency mediator; juvenile dependency mediation process, practice, and techniques; rules and laws governing juvenile dependency mediation; Kansas child in need of care and related laws; child and adolescent development; family systems; interviewing children; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.
- (6) **Mentor Mediator.** An approved mentor mediator course must be presented as an integrated and unified training module that includes the following components: role and duties of a mentor mediator; mentoring process, practice, and techniques; rules and laws governing mentor mediators; adult learning theory; mediator styles; principles of effective coaching, feedback, and evaluation; role playing; and ethics.
- (7) **Domestic Conciliator.** An approved domestic conciliator course must be presented as an integrated and unified training module that includes the following components: role and duties of a domestic conciliator; conciliation process, practice, and techniques; rules and laws governing domestic conciliation; writing reports and recommendations; family dynamics in separation and divorce; high-conflict personality traits; dynamics of domestic violence and child abuse; and ethics.

- (8) **Parenting Coordinator.** An approved parenting coordinator course must be presented as an integrated and unified training module that includes the following components: role and duties of a parenting coordinator; parenting coordination process, practice, and techniques; rules and laws governing parenting coordination; writing reports and recommendations; family dynamics in separation and divorce; high conflict personality traits; interviewing children; dynamics of domestic violence and child abuse; and ethics.
- (9) **Case Management.** An approved case management course must be presented as an integrated and unified training module that includes the following components: role and duties of a case manager; case management process, practice, and techniques; rules and laws governing case management; writing reports and recommendations; family dynamics in separation and divorce; high conflict personality traits; interviewing children; dynamics of domestic violence and child abuse; and ethics.

## **Rule 915**

### **MEDIATION PRACTICUM**

- (a) **General.** Before applying for approval under Rule 911, a prospective mediator must participate in an approved practicum with an approved mentor mediator. In a practicum, the approved mentor mediator evaluates whether the prospective mediator has demonstrated the required basic skills and knowledge to become an approved mediator.
- (b) **Written Mentoring Agreement.** Before beginning a practicum, an approved mentor mediator and the prospective mediator must enter into a written mentoring agreement. The written agreement must include:
- (1) an explanation of the approved mentor mediator's expectations and procedures;
  - (2) an explanation of any fees and costs assessed to the prospective mediator, along with accepted method of payment;
  - (3) a statement confirming that the approved mentor mediator retains ultimate responsibility for any actual mediation case used in the mentoring process; and

- (4) any other information the mentor mediator deems necessary when providing a mediation practicum.

(c) **Practicum.**

- (1) **Provider.** A practicum that qualifies under Rule 911 must be supervised or conducted by an approved mentor mediator.
- (2) **Practicum Approval.**
  - (A) An approved mentor mediator must obtain written approval from the director before offering a practicum in an area of mediation approved under Rule 911.
  - (B) A practicum must:
    - (i) include at least three cases, consisting of co-mediations, mediation simulations, or a combination of co-mediations and mediation simulations; and
    - (ii) be supervised or conducted by the same approved mentor mediator unless the director waives this requirement.
  - (C) The director or a designee may attend, monitor, and observe the practicum.

(d) **Approved Mentor Mediator's Responsibilities in a Practicum.**

- (1) **Assessment and Feedback.** An approved mentor mediator must assess and provide feedback when supervising or conducting a practicum. At a minimum, the assessment and feedback should cover the following: the process and practice of mediation, including techniques and skills; time management; agreement writing; maintaining neutrality; and ethics.
- (2) **Participation.** An approved mentor mediator must engage the prospective mediator in the actual practice of mediation. A prospective mediator who solely observes a mediation case without further participation will not meet this requirement.

- (3) **Evaluation.** At the conclusion of the practicum, the approved mentor mediator must complete an evaluation in the form and manner the director prescribes. In the evaluation, the approved mentor mediator must assess whether the prospective mediator has demonstrated the required basic skills and knowledge to be an approved mediator. The approved mentor mediator must provide a copy of the evaluation to the prospective mediator.

## **Rule 916**

### **CONTINUING DISPUTE RESOLUTION EDUCATION**

- (a) **Compliance Period.** The compliance period means the period from January 1 through December 31.
- (b) **Credit Hours.**
  - (1) An approved individual must earn at least six credit hours of CDRE in each compliance period.
  - (2) Of the six CDRE credit hours, at least one hour must be in the area of domestic violence or ethics.
  - (3) CDRE credit will be awarded on the basis of one credit hour for each 50 minutes spent participating in instructional activities, exclusive of introductory remarks, meals, breaks, or other non-educational activities. One-half credit hour will be awarded for attendance of at least 25 but less than 50 minutes. No credit may be claimed for attendance of less than 25 minutes.
- (c) **No Carryover of Credit.** No CDRE credit hours may be carried forward to the next compliance period.
- (d) **Approval for CDRE Credit.**
  - (1) **Approved Presentation.** To offer CDRE credit for any presentation, the provider sponsoring the presentation must obtain written approval from the director. On approval, the director will designate the number of CDRE credit hours that can be earned. The director or a designee may attend, monitor, and observe the presentation.

- (2) **Presentation that Has Not Been Approved.** To receive CDRE credit for attendance at a presentation that has not been approved, the attendee must submit to the director a written request for CDRE credit. The request must include documentation of the topics addressed and the hours attended. If approved, the director will grant the number of CDRE credit hours that were earned.
- (3) **Credit for Teaching.** One CDRE credit hour may be awarded for each 50 minutes spent preparing for and teaching an approved CDRE presentation or approved training course, up to a total of five CDRE credit hours per compliance period. An approved individual must submit to the director a written request for CDRE credit that outlines program content, teaching methodology, and time spent in preparation and instruction. In determining the number of credit hours to grant, the director will calculate time spent in preparation and teaching. A repeat presentation may qualify for CDRE credit hours, but the number will be limited to time actually spent updating the presentation and teaching. Instruction must be directed toward an audience composed primarily of dispute resolution professionals. CDRE credit will not be awarded for teaching undergraduate, graduate, or law school classes.
- (4) **Credit for Authorship.** One CDRE credit hour may be awarded for each 50 minutes spent researching, writing, and preparing articles on dispute resolution for publication, up to a total of five CDRE credit hours per compliance period. An approved individual must submit to the director a written request for CDRE credit. The director may award CDRE credit if the approved individual's work has produced a published article, chapter, monograph, or book personally authored, in whole or part, that contributes substantially to the education of dispute resolution professionals. Publication must occur during the compliance period for which credit is requested.
- (5) **Materials.** Thorough, high quality, readable, useful, and carefully prepared instructional materials must be made available to all participants at or before the time the program is presented, unless the director approves the absence of instructional materials as reasonable.
- (6) **Other Activities for Credit.** The director may approve other activities for CDRE credit if the activity promotes and improves the practice of dispute resolution.



- (e) **Exemption for Good Cause.** The director may grant an exemption from the annual CDRE requirement for good cause, such as hardship or disability. A written request for exemption must be submitted to the director with a full explanation of the circumstances necessitating the request.
- (f) **List of Approved Presentations for CDRE credit.** The director must keep a public listing of approved presentations for CDRE credit. A provider may opt out of the public listing.

### **Rule 917**

#### **APPROVED PROGRAM PROVIDING TRAINING COURSES AND CDRE**

- (a) **Approved Training Course.** An approved program may provide an approved training course under Rule 914 that complies with the requirements under this subsection.
  - (1) **Course Approval.** An approved program must obtain written approval from the director before advertising or offering an approved course for applicants under Rule 911 or 912. The director may approve the training course for mediation, domestic conciliation, parenting coordination, case management, or mentor mediation training and designate the number of qualifying hours that can be earned.
  - (2) **Approved Training Courses and Future Offerings.**
    - (A) An approved training course may be offered again if the approved program makes no substantive changes to the course and notifies the director in advance of the subsequent offering. An approved program must keep attendance records and evaluation summaries for each course on file for a minimum of three years.
    - (B) Notification to the director must include the time, date, and agenda for the course and the number of approved hours that can be earned.
    - (C) The director may reconsider approval of an approved training course at any time.

- (3) **Monitoring or Observation by Director.** The director or a designee may attend, monitor, and observe an approved training course.
  - (4) **Trainer Requirements.** An approved training course must be presented by a person or persons qualified by practical or academic experience to present the subject. At least one of the persons presenting must have three years of practical experience using that dispute resolution process.
- (b) **CDRE.**
- (1) **CDRE Approval.** An approved program that offers CDRE credit must comply with Rule 916.
  - (2) **Approved CDRE and Future Offerings.**
    - (A) An approved presentation may be offered again if the approved program makes no substantive changes to the presentation and notifies the director in advance of the subsequent offering. An approved program must keep attendance records and evaluation summaries for each CDRE presentation on file for a minimum of three years.
    - (B) Notification to the director must include the time, date, and agenda for the CDRE presentation and the number of approved hours that can be earned by attending.
    - (C) The director may reconsider approval of an approved CDRE presentation at any time.
  - (3) **Monitoring or Observation by Director.** The director or a designee may attend, monitor, and observe an approved CDRE presentation.

### **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 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 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.
- (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.

## **Rule 919**

### **COMPLAINTS**

- (a) **Complaint Concerning an Approved Individual or Approved Program.** A person who alleges that an approved individual or program has violated Rule 918 may submit a complaint under this rule. This rule does not govern an allegation of



misconduct if an approved individual has been court-appointed and the court still has jurisdiction over the case.

- (b) **Complaint Requirements.** The complaint must be submitted to the director using the standardized form and must include the following:
  - (1) name, mailing address, phone number, and email address of the person filing the complaint;
  - (2) name, mailing address, phone number, and email address of the dispute resolution provider;
  - (3) name, mailing address, phone number, and email address of each party and, if applicable, the party's attorney;
  - (4) case number, if applicable;
  - (5) a detailed description of the basis for the complaint, including identification of the specific provisions of Rule 918 alleged to have been violated; and
  - (6) a detailed description of any effort to informally address the incident identified in the complaint.
- (c) **Initial Review.** The director promptly must conduct an initial review of each complaint received.
- (d) **Action Following Initial Review.** On conclusion of an initial review, the director may:
  - (1) dismiss the complaint, if the director determines the complaint is frivolous or without merit; or
  - (2) refer the complaint to the chairperson for investigation under Rule 920.
- (e) **Director May Request Investigation.** The director may request an investigation of a potential violation of Rule 918 on the director's own initiative.

## Rule 920

### INVESTIGATIONS

- (a) **Investigator Appointment.** Upon receipt of a referral under Rule 919(d) or a request under Rule 919(e), the chairperson must appoint a current or former council member to investigate the complaint. The director must forward a copy of the complaint and letter of appointment to:
  - (1) the appointed investigator;
  - (2) the approved individual or program; and
  - (3) the complainant.
- (b) **Response.** The approved individual or program may submit to the investigator a written response no later than 21 days after receipt of the complaint.
- (c) **Report and Recommendation.** On conclusion of the investigation, the investigator must submit a written report to the chairperson. The investigator must recommend:
  - (1) dismissing the complaint;
  - (2) additional training; or
  - (3) suspending the approved individual's or program's status for a stated period of time or indefinitely.
- (d) **Confidentiality of Records.** Any investigation conducted or information obtained or provided under these rules is subject to the confidentiality provisions and exceptions contained in K.S.A. 5-512, 23-3505, 60-452a, and any other applicable state or federal law regarding privacy and confidentiality. Information that is not reasonably necessary for any investigation or action under K.S.A. 5-512(b)(1), 23-3505(b)(1), or 60-452a(b)(1) remains confidential. Any record pertaining to any investigation conducted or information obtained or provided under this process is not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

## Rule 921

### COMPLAINT RESOLUTION

- (a) **Investigator's Recommendation.** When the chairperson receives a report from the investigator under Rule 920(c), the chairperson will consider the investigator's recommendation and issue a written determination.
- (b) **Chairperson's Determination.** The director will forward a copy of the chairperson's determination to the complainant and the approved individual or program. The chairperson's determination is final if no timely appeal is submitted under subsection (c).
- (c) **Appeal.** The approved individual or program may appeal the chairperson's determination to the Supreme Court no later than 21 days after issuance.
- (d) **Review Panel.** The chief justice of the Kansas Supreme Court will appoint a three-person review panel to consider the appeal. The review panel must include at least two current or former council members. One of the members must be approved in the dispute resolution area practiced by the approved individual or program under investigation. The chief justice will also designate one of the appointees to be the presiding member of the review panel. The director will provide copies of the complaint, response, investigative report, chairperson's determination, and request for appeal to the review panel no later than 14 days after the panel's appointment.
- (e) **Review Panel's Determination.** The review panel must submit to the director its written determination. On receipt of the determination, the director must forward copies of the determination to the chairperson and the approved individual or program. The determination of the review panel is final and not subject to further review.
- (f) **Individual Licensed or Approved by Another Body.** If the final determination results in action as stated in Rule 920(c)(2) or (c)(3) and it concerns an approved individual that is licensed as an attorney in Kansas, the director must forward a copy of the complaint to the disciplinary administrator under Supreme Court Rule 209. If the approved individual possesses a license, certificate, or approval by another licensing body, including one that is out of state, the director may forward a copy of the complaint to the applicable licensing body.

**Rule 922**

**IMMUNITY**

Applications, complaints, investigations, or investigative reports made in the course of proceedings under these rules are deemed to be made in the course of judicial proceedings. The chairperson, chairperson's appointee, members of the council, and employees of the office of judicial administration shall be immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges, and immunities afforded to participants in actions filed in the courts of this state.

BY ORDER OF THE COURT this 1 day of July, 2019.



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LAWTON R. NUSS  
Chief Justice