



FAQ Topics

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The Process of Mediation

What is mediation?

Mediation is a confidential process where a neutral third person called a mediator helps the parties discuss and try to resolve the dispute. While courts can mandate that certain cases go to mediation, the process remains "voluntary" in that the parties are not required to come to agreement.

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When is mediation appropriate and what are its advantages?

Settling disputes through mediation can be faster, less expensive and can leave both parties feeling in a better state of mind over a decision they crafted together. There are several other significant benefits of mediation which include:

- **Greater control** – Mediation does not guarantee an outcome, The mediator collaborates with the parties to try to find a solution, but with no guarantee that the issue will be resolved. Both parties have more equal control over the solution and are not forced to accept an outcome with which they are not happy.
- **Confidentiality** – Disputes settled out of court through mediation are entirely confidential to both parties, unless specifically agreed otherwise.
- **Reduced costs** – Settling disputes through court proceedings is expensive and the overall costs can be highly unpredictable. Resolving disputes through mediation, however, can often be much faster and much less costly than other alternatives.



- **Enhanced support** – Mediations are facilitated by a trained, neutral mediator who engages with the conflicting parties and helps them work towards finding a solution that is acceptable to both sides.
- **Preservation of relationships** – Settling workplace, neighborhood or family disputes are often demanding situations to oversee, and often full of emotion. Mediation helps both parties focus on communicating effectively with each other and coming to a negotiated settlement that works for all involved.

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How successful is mediation?

Mediation empowers disputing parties to resolve their differences.

Research supports that if parties can reach their own resolution, they are more likely to follow those agreements than if another authority would make the decisions for them.

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The main steps in the mediation process

- The Agreement to Mediate
- Appointment of the Mediator
- Initial Contacts Between the Mediator and the Parties
 - scheduling the first meeting
 - agreeing any preliminary exchange of documents
- First and Subsequent Meetings
 - establishing the ground rules of the process
 - gathering information and identifying issues
 - exploring the interests of the parties
 - developing options for settlement
 - evaluating options
- Concluding either with a Mediated Agreement or an impasse

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Are mediators bound by a professional code of conduct?

Yes. Most mediators are associated with one or more provider institutions and adopt their Code of Conduct. You should always ask to see a copy of the code and be sure you are comfortable with it. Most mediators also carry a professional indemnity insurance policy, which it is also wise to verify. Approved dispute resolution providers are also bound by ethical rules in the Kansas Supreme Court Rules Relating to Dispute Resolution.

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Is mediation costly?

All costs are relative to the payback and alternatives. Usually, mediation is the least costly of the alternatives, often far less costly than hiring an attorney to represent you in court.

Some mediators provide mediation on a sliding scale. At this link kscourts.org is a list of approved mediators and their fees.

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How to Select a Mediator

Five steps to choosing a qualified mediator

1. Decide What You Want from Mediation
2. Compile a List of Names
3. Evaluate Written Materials
4. Interview the Mediators
5. Evaluate Information and Make Decision

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What are the classifications of mediators in Kansas?

These are the categories listed at kscourts.org for mediation.

- [Core mediation](#)
- [Civil mediators](#)
- [Domestic mediators](#)
- [Parent-adolescent mediators](#)
- [Juvenile dependency mediators](#)

The site listed above also lists references for those specifically trained for

- Domestic conciliation
- Parenting coordination
- Case management

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How to Prepare for a Mediation

Questions to ask yourself in preparation for Mediation

- What is my goal for mediation?
- What am I willing to offer in mediation to achieve my goal?
- What do I need from the other party to agree with what they want?
- What is my BATNA (best alternative to a negotiated agreement)?
- What is my WATNA (worst alternative to a negotiated agreement)?
- What are my interests that need to be addressed?
- Can I present my interests clearly and not combative?
- Can I listen to the other party's interests?
- Can I come to mediation with an open mind to explore all options on the table?
- Does the other party have the authority to support the terms of the agreement?

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More on Mediation

There are diverse ways that a mediation can proceed. Most mediations start with the parties together in a joint session. The mediator will describe how the process works, will explain the mediator's role and will help establish ground rules and an agenda for the session. Parties then make opening statements. Some mediators conduct the entire process in a joint session. However, other mediators will move to separate sessions, shuttling back and forth between the parties. If the parties reach an agreement, the mediator may help reduce the agreement to a written contract or Memorandum of Understanding (MOU), which may be enforceable in court.

Mediation is not a suitable procedure for settling disputes in all cases. Where deliberate, bad faith counterfeiting or piracy is involved, mediation, which requires the cooperation of both sides, is unlikely to be appropriate. Similarly, where a party is

- certain that it has a clear-cut case, or
- intimidated by the other party that sincere negotiation would be prevented.
- the parties or one of them is to obtain a neutral opinion on a question of genuine difference,
- to establish a precedent or to be vindicated publicly on an issue in dispute, mediation may not be the appropriate procedure.

On the other hand, mediation is an attractive alternative where any of the following are important priorities of either or both of the parties:

- minimizing the cost-exposure entailed in settling the dispute.
- the maintenance of control over the dispute-settlement process,
- a speedy settlement,
- the maintenance of confidentiality concerning the dispute. (there is no public record)
- the preservation or development of an underlying business relationship between the parties to the dispute.

The last-mentioned priority makes mediation especially suitable where the dispute occurs between parties to a continuing contractual relationship, such as a license, distribution agreement or joint research and development (R&D) contract, since, as mentioned above, mediation provides an opportunity for finding a solution by reference also to business interests and not just to the strict legal rights and obligations of the parties.

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