

72-5427. Mediation; request for appointment of fact-finding board; time limitations; memorandum describing issues and final position of parties; confidentiality. (a) Upon finding that an impasse exists in professional negotiation or upon receipt of a joint notice of the existence of impasse filed by the parties under subsection (d) of K.S.A. 72-5426, and amendments thereto, the secretary shall appoint a mediator to assist in resolving the impasse, from a list maintained by the secretary of qualified and impartial individuals who are representative of the public. To the extent practicable, the secretary shall utilize the services of the federal mediation and conciliation service for mediation under this section.

(b) The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such other steps as appropriate in order to assist the parties to resolve the impasse and to proceed with professional negotiation.

(c) If either party determines, after the seven-day period immediately succeeding the appointment of the mediator, that mediation has failed to resolve the impasse, such party may within 10 days after the unsuccessful conclusion of mediation file a written request with the secretary to appoint a fact-finding board to assist in resolving the impasse and the secretary shall immediately notify the other party of the request. Within three days thereafter, each of the parties shall prepare and submit to the secretary a written memorandum containing a description of the issues upon which the impasse exists and shall include therein a specific description of the final position of the party on each issue.

(d) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 et seq., and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(e) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A. 2016 Supp. 38-2223, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

History: L. 1977, ch. 248, § 8; L. 1979, ch. 226, § 3; L. 1980, ch. 220, § 10; L. 1996, ch. 129, § 5; L. 2006, ch. 200, § 115; Jan. 1, 2007.