

APPENDIX

AMENDMENTS TO TENNESSEE SUPREME COURT RULE 31, RULE 31 APPENDIX A AND
NEW RULE 31A TO CURRENT RULE 31

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RULE 31: ALTERNATIVE DISPUTE RESOLUTION- MEDIATION.

GENERAL PROVISIONS

Section 1. Application. The standards and procedures adopted under this ~~rule~~Rule apply only to Rule 31 ~~ADR Proceedings~~Mediations and ~~only to Dispute Resolution Neutrals~~Rule 31 Mediators serving pursuant to this ~~rule.~~TheyRule. ~~The standards and procedures~~ do not affect or address the general practice of mediation or alternative dispute resolution in the private sector outside the ambit of Rule 31. Pursuant to the provisions of this Rule, a ~~court~~Court may order the parties ~~to~~in an ~~eligible civil action~~Eligible Civil Action, as defined in Section 2(f). to participate in ~~certain alternative dispute resolution proceedings~~a Rule 31 Mediation.

Section 2. Definitions.

~~(a) An "Active Rule 31 Mediator" is any person listed by the ADRC as a mediator pursuant to section 17 herein, who has complied with all applicable renewal listing and continuing education requirements and is approved by the ADRC to conduct court-ordered mediations.~~

~~(b)~~(a) "Alternative Dispute Resolution Commission" or "ADRC" is the Alternative Dispute Commission established by the Supreme Court pursuant to this Rule.

~~(c)~~(b) "Baccalaureate degree" and "graduate degree" are only those degrees awarded by an institution of higher education accredited by an agency recognized by the Council for Higher Education ~~(CHEA)~~ and approved or listed by the United States Department of Education as a recognized accrediting agency. A ~~law degree~~Juris Doctor Degree from ~~an educational institution recognized~~either: (1) a law school accredited by the American Bar Association or (2) a Tennessee law school approved by the Tennessee Board of Law Examiners ~~for the purpose of allowing its graduates~~pursuant to ~~be eligible to take the Tennessee bar examination~~Supreme Court Rule 7 shall be deemed a graduate degree ~~for the purpose of~~under this ~~rule.~~DegreesRule. A law degree earned outside the United States shall be evaluated on a case by case basis by the ~~Commission in order to~~

determine whether the degree is substantially equal to a like and similar degree earned in this country and which degree if earned in this country would have been subject to the standards and academic quality which would be mandated by the foregoing accreditation process and procedure in this country. ADRC based on the provisions of Tennessee Supreme Court Rule 7.01.

~~(d) "Case Evaluation", as set forth in sections 16 and 22 herein, is a process in which a neutral person or three-person panel, called an evaluator or evaluation panel, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute, as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer an evaluation of the case.~~

~~(e) "~~(c) "Court" includes means any court exercising civil jurisdiction subject to the Tennessee Supreme Court, the Tennessee Rules.

~~(d) "Court of Appeals, Circuit, Chancery, Law & Equity and Probate Courts, General Sessions Courts, Juvenile Courts, and Municipal Courts."~~ Ordered Mediation" is a Rule 31 Mediation in which there is an Order of Reference from a Court or Judicial Officer.

~~(f) "~~Days," for purposes of the deadlines imposed by this Rule, means calendar days.

~~(g) "Eligible Civil Action" includes all civil actions~~ any civil action filed in a Court in which the Court has continuing jurisdiction, except ~~forfeitures of seized property,~~ civil commitments, adoption proceedings, habeas corpus and extraordinary writs, ~~or~~ juvenile delinquency, or dependency and neglect cases. The term "Extraordinary writs" does not encompass claims or applications for injunctive relief.

~~(h) An "Inactive Rule 31 Mediator" is any person listed by the ADRC as a mediator pursuant to section 17 herein, who has not complied with all applicable renewal listing and continuing education requirements and is not approved by the ADRC to conduct court-ordered mediations.~~

~~(i) "Judicial Settlement Conference" is a mediation conducted by a judicial officer as set forth in section 20 herein.~~

~~(j) "~~(g) "Judicial Officer" serves by election or continuing appointment in a judicial office, such as: 1) a sitting judge in a Court; or 2) a Juvenile Referee, Divorce Referee, Referee, and Special Master.

(h) "Order of Reference" is a written or standing order of a Court or Judicial Officer entered in or related to an Eligible Civil Action in accordance with Section 3 herein directing the parties to participate in a Rule 31 Mediation.

(i) A "Rule 31 Mediation" is an informal process in which a neutral person Rule 31 Mediator conducts discussions among the disputing parties that is designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute disputed issues: 1) in or related to an Eligible Civil Action; or 2) in any civil dispute in which the Rule 31 Mediator and the parties have agreed in writing that the mediation will be conducted pursuant to Rule 31.

~~(k)-j) A "Rule 31 Mediator" is a neutral person who conducts discussions among disputing parties to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.~~ is any person listed by the ADRC as a mediator pursuant to section 17 herein, pursuant to Section 14 of this Rule, who has complied with all applicable renewal listing and continuing education requirements and is approved by the ADRC to conduct Court-Ordered Mediations.

~~(l) "Mini-Trial", as set forth in sections 15 and 23 herein, is a settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.~~

~~(m) "Neutral" is an impartial person who presides over alternative dispute resolution proceedings as defined in this Rule.~~

~~(n) "Non-Binding Arbitration" is a process in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is non-binding as set forth in sections 14 and 21 herein.~~

~~(o) Order of Reference is a written or standing order of a court entered in or related to an eligible civil action in accordance with Section 3 (Initiation), directing the parties to participate in a Rule 31 proceeding.~~

~~(p) Rule 31 ADR proceedings are proceedings pursuant to this Rule, including, but not limited to, "Case Evaluations", "Mediations", "Judicial Settlement Conferences", "Non-Binding Arbitrations", "Summary Jury Trials", "Mini-Trials", or other similar proceedings. In the context of mediations, a "Rule 31 ADR Proceeding" is any mediation of an Eligible Civil Action conducted by an active Rule 31 Mediator.~~

~~(q) A "Rule 31 Mediator" is any person listed by the ADRG as a mediator pursuant to section 17 herein.~~

~~(r) A "Rule 31 Neutral" is any person who acts as a Neutral in a Mediation, Case Evaluation, Mini-Trial, Non-Binding Arbitration, Summary Jury Trial, or any other similar proceeding initiated by the court pursuant to this Rule. Rule 31 Neutrals, other than Rule 31 Mediators, are required to be licensed attorneys.~~

~~(s) A "Summary Jury Trial" as set forth in section 24 herein, is an abbreviated trial with a jury in which litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.~~

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31 PROCEEDINGSRULE 31 MEDIATIONS

Section 3. Initiation/Order of Reference

(a) Rule 31 ~~ADR Proceedings~~Mediation may be initiated by the consent of the parties or by the entry of an Order of Reference.

(b) Upon motion of either party, or upon its own initiative, a ~~court,~~Court by Order of Reference, may order the parties ~~to~~in an Eligible Civil Action to participate in a ~~Judicial Settlement Conference or~~Rule 31 Mediation. ~~With the consent of the parties, trial courts are also authorized to order the parties to participate in a Case Evaluation.~~

(c) Any Order of Reference made on the ~~court's~~Court's own initiative shall be subject to review on motion by any party and shall be vacated should the ~~court~~Court determine in its sound discretion that the referred case is not appropriate for ~~ADR~~Rule 31 Mediation or is not likely to benefit from submission to ~~ADR.~~Rule 31 Mediation. Pending disposition of any such motion, the ~~ADR proceeding~~Rule 31 Mediation shall be stayed without the need for a court order.

~~(d) Upon motion of a party, or upon its own initiative and with the consent of all parties, a court, by Order of Reference, may order the parties to participate in Non-Binding Arbitration, Mini-Trial, Summary Jury Trial, or other appropriate alternative dispute resolution proceedings.~~

~~(e) The Order of Reference shall direct that all Rule 31 ADR Proceedings be~~ All Rule 31 Mediations shall be concluded as efficiently and expeditiously as possible given the

circumstances of the case.

Section 4. Selection of ~~Neutrals~~Rule 31 Mediators

(a) Within 15 days of the date of an Order of Reference, the parties must notify the ~~court~~Court of the Rule 31 ~~Neutral or Rule 31 Neutrals~~Mediator(s) agreed to by the parties or ~~of their inability to agree on a Rule 31 Neutral or Rule 31 Neutrals~~Mediator(s).

(b) ~~In the event~~When the parties cannot agree on the selection of a ~~neutral or neutrals~~Rule 31 Mediator(s), the ~~court~~Court shall nominate a ~~neutral or neutrals~~Rule 31 Mediator(s) in accordance with the following procedure:

(1) In ~~the case of Mediations, Mini-trials, Non-Binding Arbitrations, Case Evaluations and any other appropriate alternative dispute resolution proceeding~~a Rule 31 Mediation in which a single Rule 31 ~~Neutral~~Mediator will serve, the ~~court~~Court shall designate ~~three Rule 31 Neutrals~~Mediators from the appropriate list or having the appropriate qualifications as set forth in Sections 14–18, and one additional Rule 31 Neutral for each additional party over two a list of mediators maintained by the Program Manager of the Administrative Office of the Courts, as referenced in Section 4(d).

(2) ~~In the matter of a Case Evaluation or Non-Binding Arbitration before a panel of three or more Rule 31 Neutrals, the court shall designate three Rule 31 Neutrals, meeting the qualifications noted in Sections 14 or 16~~In a Rule 31 Mediation in which more than one Rule 31 Mediator will serve, the Court shall designate three Rule 31 ~~Neutrals~~Mediators from a list of mediators maintained by the Program Manager of the Administrative Office of the Courts, as referenced in Section 4(d), for each seat on the panel and one additional Rule 31 ~~Neutral~~Mediator for each seat on the panel for each additional party over two.

(3) After receiving the ~~court's~~Court's nominations, each party shall strike one name from the Court's list for each ~~Neutral~~Rule 31 Mediator being selected ~~from the court's nominations. The court then~~The Court shall appoint the remaining Rule 31 ~~Neutral or Neutrals~~Mediator(s) unless a valid and timely objection is made ~~and within 10 days of the Court's appointment. In the event the objection is upheld. In the event the~~ or if a designated Rule 31 NeutralMediator otherwise cannot serve, the process under this section will be repeated to the extent necessary.

(4) The ~~court's~~Court's nomination of any Rule 31 ~~Neutrals~~Mediator shall be by random selection unless the matter requires particular expertise not possessed by all Rule 31 ~~Neutrals~~Mediators.

~~(c)~~ If a Rule 31 Mediation is conducted by consent of the parties without an Order of Reference, the parties shall choose the Rule 31 Mediator.

(d) The Programs Manager of the Administrative Office of the Courts shall maintain and make available to the public by posting on the AOC website a list of Rule 31 Mediators listed by the ADRC, the date of their approval, ~~and~~ their occupation, and contact information.

Section 5. Reports in Rule 31 Mediations Conducted in Eligible Civil Actions

~~(a)~~ At the conclusion of a Rule 31 Mediation in an Eligible Civil Action, the Rule 31 Mediator shall submit a final report ~~pursuant to Rule 5.06, Tenn. R. Civ. P., to the Court by filing same~~ with the clerk of the court ~~at the conclusion of the Rule 31 ADR Proceeding.~~ The final report shall state only: (i) which parties appeared and participated in the Rule 31 ~~ADR Proceeding~~ Mediation; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 ~~Neutral~~ Mediator requests that the costs of the ~~Neutral's~~ Rule 31 Mediator's services be charged as court costs. The report shall be submitted within the time specified by the ~~court~~ Court in the Order of Reference. In the event there is no Order of Reference or the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the ~~initial meeting with conclusion of~~ the ~~parties,~~ Rule 31 Mediation or within the time period specified by the ~~court.~~ Court.

~~(b) For an Eligible Civil Action mediated by a Rule 31 Mediator, a final report shall be submitted in the manner described within this section.~~

Section 6. Participation of Attorneys

Attorneys may ~~appear~~ participate with their clients during ~~alternative dispute resolution proceedings~~ Rule 31 Mediations.

Section 7. Confidential and Inadmissible Evidence

Evidence of conduct, information disclosed, or ~~statements~~ any statement made in the course of ~~Rule 31 ADR Proceedings and a~~ Rule 31 Mediation is confidential to the extent agreed by the parties or provided by other ~~proceedings conducted pursuant to an Order of Reference~~ law or rule of this State. Such evidence shall be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408. No Rule 31 Mediator may be compelled to testify by deposition or otherwise regarding such conduct, information, or statements. A written mediated agreement signed by the parties is admissible to enforce the understanding of the

parties.

Section 8. Costs

(a) The costs of any Rule 31 ~~ADR Proceeding~~ Mediation, including the costs of the services of ~~at the~~ Rule 31 ~~Neutral~~ Mediator(s) may, at the ~~Rule 31 Neutral's~~ request, of the Rule 31 Mediator(s), be charged as court costs. The request to charge the costs of the services of the Rule 31 ~~Neutral~~ Mediator(s) should be submitted to the Court by filing same with the clerk of the court ~~as set forth in Section 5 of this Rule.~~ ~~If an appeal of the case is filed,~~ the parties ~~shall appeal to the appellate court(s),~~ the parties may advise the appellate court in their ~~appellate~~ briefs whether the Rule 31 ~~Neutral~~ Mediator(s) requested that the cost of the Rule 31 ~~Neutral's~~ Mediator's services be included in the court costs.

(b) The ~~court~~ Court may, in its sound discretion, waive or reduce the costs of a Rule 31 ~~ADR Proceeding~~ Mediation.

GENERAL PROVISIONS APPLICABLE TO ALL ~~NEUTRALS~~ RULE 31 MEDIATORS

Section 9. Standards of Professional Conduct for Rule 31 ~~Neutrals~~ Mediators

(a) Rule 31 ~~Neutrals~~ Mediators shall avoid the appearance of impropriety.

(b) Rule 31 ~~Neutrals~~ Mediators shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31 ~~ADR Proceedings~~ Mediations, including but not limited to the Standards of Professional Conduct for ~~Rule 31 Covered~~ Neutrals attached as Appendix A hereto. Under Tenn. Sup. Ct. R. 8, RPC 2.4(c)(9), violation of any of these rules and procedures by any Rule 31 ~~Neutral~~ Mediator who is an attorney constitutes a violation of the Rules of Professional Conduct.

(c) The Standards of Professional Conduct for Covered Neutrals attached as Appendix A ~~for Rule 31 Neutrals~~ are incorporated into this Rule.

(d) Ethics Advisory Opinion Committee

(1) The Ethics Advisory Opinion Committee ("the Committee") shall provide written advisory opinions to Rule ~~31 Neutrals~~ 31 Mediators and alternative dispute resolution organizations in response to ethical questions arising from Rule 31 and the Standards of Professional Conduct for Covered Neutrals.

(2) The Ethics Advisory Opinion Committee shall be composed of three ~~Commissioners~~members of the ADRC, one from each Grand Division, appointed on a rotating basis by the Chair of the ADRC when a request for an opinion is received and reviewed by the Programs Manager. The Chair may also appoint a ~~Committee~~committee, from time to time, to issue advisory opinions ~~as to areas~~regarding issues of concern to the Commission.

(3) All requests for advisory opinions shall be in writing and shall be submitted to the Programs Manager.

(4) The Committee shall meet in person or by telephone conference as necessary to consider the request for an advisory opinion. Upon due deliberation, and upon the concurrence of a majority of the Committee, the Committee shall issue an opinion. The opinion shall be signed by each member of the Committee, and filed with the Programs Manager, ~~published in the ADR News and on~~. The opinion shall be made available to the public through the AOC website, the ADR News, and ~~be made available~~ upon written request to the Programs Manager.

(5) Prior to publication, all identifying references to the requesting ~~Neutral~~Rule 31 Mediator or the names of any ~~other real person, firm, organization~~persons, firms, organizations, or ~~corporation~~corporations shall be deleted from any request for an opinion, any document associated with the preparation of an opinion, and any opinion issued by the Committee.

(6) Reliance by ~~a Neutral~~a Rule 31 Mediator on an opinion of the Committee shall not constitute a defense in any disciplinary proceeding; such reliance, however, shall be evidence of good faith and may be considered by the ~~Commission~~ADRC in relation to any determination of guilt or in mitigation of punishment. If the requesting ~~Neutral~~Rule 31 Mediator later is brought before the Grievance Committee on allegations of misconduct in the same mediation for which the ~~mediator~~Rule 31 Mediator requested and received an opinion, the ~~Commissioners~~ADRC members who served on the Ethics Advisory Opinion Committee ~~will~~shall be precluded from participating in the grievance procedure.

Section 10. Obligations of Rule 31 ~~Neutrals~~Mediators

(a) Before the commencement of any Rule 31 ~~ADR Proceeding~~Mediation, the Rule 31 ~~Neutrals~~Mediator shall:

(1) Make a full and written disclosure of any known relationships with the parties or their counsel which may affect or give an appearance of affecting the ~~Rule 31 Neutral's~~ Rule 31 Mediator's neutrality.

(2) Advise the parties regarding the ~~Rule 31 Neutral's~~ Rule 31 Mediator's qualifications and experience.

(3) Discuss with the parties the rules and procedures that will be followed in the Rule 31 Mediation.

(b) During Rule 31 ~~ADR Proceedings,~~ Mediations, the Rule 31 ~~Neutrals~~ Mediator shall:

(1) Advise the ~~court before~~ Court in which the proceeding is pending if the ~~ADR proceeding~~ Rule 31 Mediation is, or is likely to become, inappropriate, unfair, or detrimental in the referred action.

(2) Maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(3) Refrain from giving legal advice, while serving as a Rule 31 Mediator, to the parties ~~to~~ in the Rule 31 ~~ADR Proceeding in which the Neutral is participating.~~ Mediation. However, while a Rule 31 ~~Neutral~~ Mediator should not offer a firm opinion as to how the ~~court~~ Court in which a case has been filed will resolve the case, a Rule 31 ~~Neutral~~ Mediator may point out possible outcomes of the case and may indicate a personal view of the persuasiveness of a particular claim or defense. ~~Moreover, an "Evaluation" pursuant to a Case Evaluation, an "award" pursuant to a Non-Binding Arbitration, or an "advisory verdict" pursuant to a Summary Jury Trial will not be considered to be "legal advice" for purposes of this Rule.~~

(c) During and following Rule 31 ~~ADR Proceedings~~ Mediations, Rule 31 ~~Neutrals~~ Mediators shall:

(1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master, or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31 ~~ADR Proceeding~~ Mediation was conducted.

(2) Provide a timely report as required under ~~section~~ Section 5 of this Rule.

(3) Avoid any appearance of impropriety in the ~~Neutral's~~ Rule 31 Mediator's relationship with any member of the judiciary or the judiciary's staff with regard to the Rule 31 ~~ADR Proceedings~~ Mediation or the results of the Rule 31 ~~ADR Proceedings~~ Mediation.

~~(d) Rule 31 Neutrals shall preserve~~(4) Preserve and maintain the confidentiality of all information obtained during the Rule 31 ADR Proceedings Mediation and shall not divulge information obtained by ~~them~~the Rule 31 Mediator during the course of the Rule 31 ADR Proceedings Mediation without the consent of the parties, except as otherwise may be required by law.

~~(e) The Neutral may assist~~(5) Assist the parties in memorializing the ~~terms~~agreement of the ~~parties' settlement~~parties at the end of the mediation. Rule 31 Mediators may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct. R. 52 and any other forms approved by the Tennessee Supreme Court.

~~(f)~~d) The Rule 31 NeutralsMediator shall not be called as a witness in any proceeding to enforce any terms of the resulting mediation agreement.

Section 11. Proceedings for Discipline of Rule 31 Mediators

(a) Initiation of Complaint

~~(1) All complaints~~Any individual who participated in a Rule 31 Mediation may file a complaint alleging a violation of or failure to comply with the provisions of this Rule or any standard promulgated under this Rule against an activethe Rule 31 Mediator(s) who conducted the Rule 31 Mediation.

~~(2) Any complaint against a~~ Rule 31 Mediator must be post-markedreceived by the Programs Manager of the Administrative Office of the Courts no later than 180 days after the date of the final mediation session ~~and must be submitted~~or alleged violation of a provision of this Rule or any standard promulgated under this Rule.

~~(3) The complainant shall submit a sworn complaint to the Programs Manager~~ of using a complaint form promulgated by the ~~Administrative Office of~~ ADRC and posted on the ~~Courts~~AOC website.

~~(4) Any complaint post-marked~~that is not sworn or is received later than 180 days after the date of the final mediation or alleged violation will not be accepted and the complainant will be barred from ~~bringing a~~pursuing the complaint with the ~~ADR Commission~~ADRC. This statute of limitations only applies to the ~~ADR Commission's~~ADRC's exercise of its own procedures contained within this Rule.

~~(2) Any grievance against an active Rule 31 Mediator who is an attorney that raises a substantial question as to the attorney's honesty, trustworthiness, or fitness as a lawyer in other respects shall be filed with the Board of Professional Responsibility. If~~

~~the ADRC Chair determines that a complaint filed with the ADRC sets out such a grievance, the ADRC shall promptly refer the complaint to the Board of Professional Responsibility. If the complaint is filed with both the ADRC and the Board of Professional Responsibility, the ADRC will defer to the Board of Professional Responsibility. If the Board of Professional Responsibility imposes a sanction on the attorney for misconduct as a Rule 3-1 Mediator, the Grievance Committee may also conduct a hearing and impose sanctions pursuant to Section~~

~~(b)(8)~~ **Processing** of this Rule. ~~(3) All complaints setting out a grievance against an active Rule 3-1 Mediator who is an attorney that do not raise~~ **Complaint**

~~(1) Once a substantial question as to the attorney's honesty, trustworthiness, or fitness as a lawyer shall be filed with the Programs Manager of the Administrative Office of the Courts. The Complaint has been received, the Programs Manager will then~~ **shall, within a reasonable period of time,** forward the complaint to the ADRC Chair. ~~The complaint shall be processed in accordance with Section (b) of this Rule.~~

~~(b)(1) Any complaint setting out~~ **(2) Within** a grievance against an active Rule 3-1 Mediator regarding the failure of the Rule 3-1 Mediator to comply with the provisions of this Rule or any standard promulgated under this Rule shall be filed with **reasonable time after receiving the complaint from** the Programs Manager ~~of the Administrative Office of the Courts. The Programs Manager will then forward the complaint to the ADRC Chair.~~ **(2) The complaint shall be reviewed in the first instance by, the ADRC Chair shall appoint** a Grievance Committee **consisting** of three ~~Commissioners, appointed by the Chair and, where~~ **ADRC members, and, when** possible, from the Grand Division in which the alleged act or failure to act giving rise to the allegations contained in the complaint took place. **If the complaint is against an ADRC member, the Grievance Committee shall consist of three non-ADRC members appointed by the Supreme Court.**

(3) The Grievance Committee shall ~~determine,~~ **within a reasonable period of time, review the complaint and make a facial sufficiency determination as to** whether the allegations contained in the complaint, if **taken as** true, ~~would~~ **may** constitute a violation of Rule 31. ~~or any standard promulgated under Rule 31.~~

(4) If the Grievance Committee finds that the conduct that is the subject of the complaint does not constitute a violation of Rule 31 **or any standard promulgated under Rule 31,** the Grievance Committee shall dismiss the complaint without prejudice and the Programs Manager shall notify the complainant and the ~~mediator~~ **Rule 31 Mediator** of the dismissal.

(c) Process if Grievance Committee Determines Facial Sufficiency of Complaint

(1) If the Grievance Committee determines that the allegations, if taken as true, could may constitute a violation of Rule 31 or any standard promulgated under Rule 31, the Committee shall prepare a list of any rule(s) or standard(s) which the mediator Rule 31 Mediator may have violated. The Programs Manager will provide shall send a copy of the list, a copy the complaint, and a copy of Rule 3 1 to the mediator.

~~(4) Within 10 days of the receipt of the the list of alleged Rule violations prepared by the Grievance Committee and and a copy of Rule 31 to the Rule 31 Mediator named in the complaint, the mediator. Service shall be made by mailing a copy of the document to be served to such person's last known address. Service by mail is complete upon mailing.~~

Service may also be made by sending him or her the document in Adobe PDF format to the Rule 31 Mediator's last known email address as maintained under Section 15 or which shall be promptly furnished on request. A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under Section 11.

(2) The Rule 31 Mediator shall send a written response to the Programs Manager by registered or certified postal mail, and electronic mail and the AOC must receive the response within 30 days of the posting in (c)(1). If the mediator does not Rule 31 Mediator fails to timely respond, to the allegations, the grievance shall be deemed admitted. The, and the Grievance Committee may, within 10 days, recommend sanctions per subsection (d)(2)(v).

(3) Within 10 days of receipt of the Rule 31 Mediator's response, the Programs Manager shall forward a copy of the mediator's Rule 31 Mediator's response to the complainant. The by postal mail and may also forward a copy by electronic mail. Within 30 days of posting of the Rule 31 Mediator's response, the complainant will then have 10 days to respond in writing to the mediator's response. (5) The Grievance Committee will then review the complaint, the mediator's response, and the complainant's shall send a written response to the Rule 31 Mediator's response to the Programs Manger by postal mail and electronic mail. The AOC must receive the complainant's counter-response. The within 30 days of the Programs Manager's posting of the Rule 31 Mediator's response.

(4) Within 10 days of receipt of all responses, the Programs Manager shall forward all responses received to the Grievance Committee may find that no violation has occurred and dismiss the complaint. The Committee may also resolve the issue pursuant to subdivision (6) of this rule.

(6)(5) Notwithstanding any other provision in this Rule, at any time while the Grievance

Committee has jurisdiction, it or its designated chair may meet with the complainant and the ~~mediator~~Rule 31 Mediator, jointly or separately, in an effort to resolve the matter. ~~The resolution may include sanctions if agreed to by the mediator. If sanctions are accepted, all relevant documentation shall be forwarded to the ADRC Chair.~~ These meetings may be in person, by video-conference, or by teleconference at the discretion of the Committee. ~~(7) Any resolution may include sanctions if agreed to by the Rule 31 Mediator. If the Rule 31 Mediator agrees to sanctions and a resolution is reached, a stipulation of dismissal signed by the complainant and the Rule 31 Mediator with the concurrence of the Grievance Committee shall be submitted to the ADRC Chair and the complaint shall be dismissed with prejudice. At any time, the Grievance Committee may accept an admission by the Rule 31 Mediator and impose sanctions determined by the Committee per subsection (d)(2)(v).~~

(6) If there is no ~~disposition, resolution per subsection (c)(5),~~ the Grievance Committee shall review the complaint, the ~~mediator's~~Rule 31 Mediator's response, the complainant's counter-response, and the result of any investigation directed by the Committee Chair, including any documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and ~~would constitute~~constituted a violation of this ~~rule.~~Rule or any standard promulgated under Rule 31. If there is no probable cause, the Committee shall dismiss the complaint in a written ~~opinion.~~decision and said decision shall be final with no right to an appeal. The Programs Manager ~~will~~shall forward a copy of the ~~opinion~~decision to the complainant and the ~~mediator.~~(8) Rule 31 Mediator.

(d) Process if Grievance Committee Determines Probable Cause

Upon a finding of probable cause, the Grievance Committee ~~shall notify~~may:

(1) Without a hearing, determine by clear and convincing evidence that a violation has occurred and issue a written decision, including a statement noting the provisions of this Rule or any standard promulgated under Rule 31 that the Rule 31 Mediator failed to comply with and the Grievance Committee's reasons for not proceeding to a hearing on the matter. In its decision, the Grievance Committee shall impose appropriate sanctions per subsection (d)(2)(v). The Programs Manager will send this written decision to the Rule 31 Mediator and the complainant. ~~and the mediator that either the mediator or the complainant is entitled to a hearing before the Committee. The Committee will conduct;~~
or

(2) Hold a hearing within 30 days ~~of finding probable cause~~or as soon thereafter as all parties, Grievance Committee members and witnesses are available for a hearing, on a date and at a ~~place~~location to be determined by the ~~Committee.~~ ~~If, after the hearing, the Grievance Committee finds that the mediator has violated Rule 31 and that such~~

~~violation warrants sanctions, it shall impose appropriate sanctions, such as a private admonition, a public reprimand, additional training, suspension or disqualification. The Committee shall issue a written opinion containing its findings. The Programs Manager will forward a copy of the opinion to the complainant and the mediator.~~

~~(9.i)~~ Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery and for the appearance of any person before the Grievance Committee, ~~the ADRC, or any member thereof,~~ may be issued by the chair of the Committee or the ADRC. ~~Such subpoenas~~ Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

~~(10.ii)~~ Any person who, without adequate ~~excuse~~ justification, fails to obey a duly served subpoena may be cited for contempt of the Grievance Committee or ADRC. Should any witness fail, without justification, to respond to the lawful subpoena of the Committee or ADRC, or having responded, fail or refuse to answer all inquiries or ~~to turn over~~ produce evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding, the Chair of the Grievance Committee or ADRC may cause a petition to be filed before the circuit court of the county in which the contemptuous act was committed. The petition shall allege the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt of the Grievance Committee or ADRC. Such petition shall pray for the issuance of an order to show cause before the circuit court why the circuit court should not find the person in contempt of the Grievance Committee or ADRC and why the person should not be punished by the court therefore. The circuit court shall issue such orders and judgments therein as the court deems appropriate.

~~(11.iii)~~ Hearings by the Grievance Committee may be conducted informally, but shall be conducted pursuant to the Tennessee Rules of Evidence that may be liberally construed. Witnesses shall testify under oath. Proceedings may be reported by a court reporter, and the cost of the same shall be paid by the party requesting the reporting.

(iv) The complainant shall have the burden of proving all allegations by clear and convincing evidence.

(v) If, after the hearing, the Committee finds clear and convincing evidence that the Rule 31 Mediator has violated Rule 31 or any standard promulgated under Rule 31 and that such violation warrants a sanction(s), the Committee shall impose an appropriate sanction(s), including but not limited to, private admonition, a public reprimand, additional training, suspension, and/or disqualification. The Committee shall issue a

written opinion containing its findings of fact and conclusions. The Programs Manager will forward a copy of the decision to the complainant and the Rule 31 Mediator.

(e) Appeal of Grievance Committee Decision

(1) Any party who desires to obtain a review of the decision of the Grievance Committee rendered either pursuant to subsection (c)(2), (d)(1), or following a hearing held pursuant to subsection (d)(2), may appeal to the full ADRC (excluding those members who served on the Grievance Committee that initially heard the complaint) by filing a written notice of appeal with the ADRC through the Programs Manager, within thirty (30) days following the Committee's decision.

~~(12) The ADRC will then hear the complaint de novo, and without a presumption of correctness, sitting without those members who served on the Grievance Committee that initially heard the complaint. An appealing party shall submit a brief describing the issues and matters for which the appealing party seeks a ruling and decision of the ADRC. This shall be submitted to the ADRC within 45 days after the request for review by the ADRC. The brief shall be served on all other~~

~~(2) If the parties. Other parties shall submit a responsive brief within 30 days after the receipt of the appealing party's brief. If the parties can agree to limit the evidence and issues to be presented for review, the ADRC may choose to accept those limitations. The full record of the subject disciplinary process, including the findings of the Grievance Committee, shall be made available to the ADRC during the review process.~~

(13)(i) Content of the Record. The record on appeal shall consist of: (A) copies of all papers filed with the Programs Manager; (B) the original of any exhibits offered; (C) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected; and (D) any other matter designated by a party and properly includable in the record.

(ii) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings. Except as provided in (iii) of Section 11(e)(2), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the Grievance Committee Hearing is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the Programs Manager and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the

appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the Programs Manager and serve on the appellant a designation of additional parts to be included. The appellant shall have the additional parts prepared at the appellant's own expense. The transcript, certified by the appellant or the reporter as an accurate account of the proceedings, shall be filed with the Programs Manager within 60 days after filing the notice of appeal. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the Programs Manager with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the Programs Manager within 15 days after service of notice of the filing of the transcript.

(iii) Statement of the Evidence When No Report, Recital, or Transcript Is Available.

If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the appellant determines that the cost to obtain the stenographic report in the matter is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant as an accurate account of the proceedings, shall be filed with the Programs Manager within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the Programs Manager with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the Programs Manager within 15 days after service of the declaration and notice of the filing of the statement.

(3) An appealing party shall submit a brief describing the issues and matters for which the appealing party seeks a ruling and decision of the ADRC. This shall be submitted to the ADRC via the Programs Manger, within 45 days after filing a written notice of appeal with the ADRC. The brief shall be served on the other party by the appealing party.

(4) The appellee shall submit a responsive brief to the ADRC via the Programs Manger, within 30 days after the receipt of the appealing party's brief and serve a copy on the other party.

(5) Within 10 days of receipt of all briefs, the Programs Manager shall forward copies of all briefs to the ADRC members.

(6) The ADRC, without those members who served on the Grievance Committee and initially heard the complaint, will hear the appeal within a reasonable time. The standard of review shall be de novo on the record with no presumption of correctness. The appellate review shall be set as soon as reasonably possible.

(7) Sections 11(c)(5) and (d)(2)(iv-v) of the Rule shall also apply to the hearings of the ADRC.

(8) The ADRC will hear and determine the complaint and then issue a written decision stating as to whether the ~~complaint~~ complainant has ~~merit~~, shown by clear and convincing evidence that the Rule 31 Mediator violated Rule 31 or any standard promulgated under Rule 31. If the ADRC determines that ~~the complaint has merit, it~~ Rule 31 or any standard promulgated under Rule 31 was violated, the ADRC shall impose appropriate sanctions on the ~~Rule 31 Mediator~~, including a private admonition, a public reprimand, additional training, suspension, and/or disqualification. The decision of the ADRC is final. ~~(14 and there is no right to an appeal.~~

(f) General Provisions

(1) A Rule 31 Mediator's failure to comply with sanctions imposed under this Section may, at the option of the ADRC, result in additional sanctions, including but not limited to loss of credentials, or the filing of a petition for contempt per the process set forth in subsection (d)(2)(ii).

(2) All matters, investigations, or proceedings involving allegations of misconduct by ~~the mediator~~ a Rule 31 Mediator, including all hearings and all information, records, minutes, files or other documents of the ADRC, the Grievance Committee, and AOC staff shall be confidential and privileged, and shall not be public records nor subject to disclosure, until or unless:

(i) a recommendation for the imposition of public discipline, without the initiation of a hearing, is filed with the ADRC by the Grievance Committee; or

~~(ii) the Grievance Committee determines that a hearing must take place; or~~

~~(iii) the mediator requests that the matter be public; or~~

~~(iv) the complaint is predicated upon conviction of the mediator for a crime.~~

~~(15)(ii)~~ the Rule 31 Mediator requests that the matter be public; or

(iii) the complaint is predicated upon conviction of the Rule 31 Mediator for a crime.

(3) All work product and work files (including internal memoranda, correspondence, notes and similar documents and files) ~~of the~~of the ADRC, Grievance Committee, and staff shall be confidential and privileged ~~and shall not be public records.~~

~~(16)(4)~~ All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality. ~~However, nothing in this rule shall prohibit the complainant, the mediator, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding under this rule or from disclosing any documents or correspondence filed by, served on, or provided to that person.~~

~~(17)(5)~~ The confidentiality of a mediation is deemed waived by the parties to the extent necessary to allow the complainant to fully present his or her case and to allow the ~~mediator~~Rule 31 Mediator to fully respond to the complaint. The waiver relates only to information necessary to deal with the complaint. The ADRC, the Grievance Committee, and staff will be sensitive to the need to protect the privacy of all parties to the mediation to the fullest extent possible commensurate with fairness to the ~~mediator~~Rule 31 Mediator and protection of the public.

~~(18)(6)~~ Once the Grievance Committee has issued an opinion, a synopsis of the case may be published in the ADRC quarterly newsletter and on the AOC website. The name of the complainant will not be included in the synopsis. If the ~~mediator~~Rule 31 Mediator is not publicly sanctioned, the name of the ~~complainant and mediator will not be included in the synopsis.~~~~(19) Members of the Grievance Committee, the ADRC and staff shall~~Rule 31 Mediator will not be ~~immune from civil suit for any conduct~~included in the ~~course of their official duties.~~ synopsis.

(7) Members of the Grievance Committee, the ADRC and AOC staff shall be immune from civil suit for any conduct in the course of their official duties.

(8) Notwithstanding any other provision of this Rule, if a grievance results in a finding, whether by admission or by decision of the Grievance Committee or the ADRC, that a Rule 31 Mediator who is also an attorney violated Rule 31 or any standard promulgated under Rule 31, and once any rights of appeal have been exhausted or have expired, the ADRC shall report the finding to the Board of Professional Responsibility of the Supreme Court of Tennessee.

~~Section 12. Immunity~~Section 12. Privilege and Immunity

Activity of Rule 31 ~~Neutrals~~Mediators in the course of Rule 31 ~~ADR~~
~~proceedings~~Mediations shall be deemed to be privileged and the performance of a
judicial function and for such acts Rule 31 ~~Neutrals~~Mediators shall be entitled to judicial
immunity.

Section 13. Compensation

~~Rule 31 Dispute Resolution Neutrals~~Rule 31 Mediators are entitled to be compensated
at a reasonable rate for participation in ~~court-ordered alternative dispute resolution~~
~~proceedings~~Court-Ordered Mediations, except pro bono proceedings pursuant to
~~Section 18~~ Section 15 -of this Rule.

~~PROVISIONS REGARDING QUALIFICATIONS AND TRAINING OF NEUTRALS~~

~~Section 14. Rule 31 Neutrals in Rule 31 Non-Binding Arbitration~~

~~(a) The Parties may select any lawyer in good standing to act as an arbitrator in a non-
binding arbitration.~~

~~(b) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an
arbitrator in a general civil case, the person appointed shall be a lawyer in good
standing and shall have been admitted to practice for at least ten years.~~

~~(c) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an
arbitrator in a family case, the person appointed shall be a lawyer in good standing and
shall have been admitted to practice for at least ten years, during which time a
substantial portion of the lawyer's practice shall have been family cases.~~

~~Section 15. Rule 31 Neutrals Presiding in Mini-Trials~~

~~(a) The Parties may select any lawyer in good standing and admitted to practice to act
as a Neutral in a Mini-Trial.~~

~~(b) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to act in a Mini-
Trial in a general civil case, the person appointed shall be a lawyer in good standing
and shall have been admitted to practice for at least ten years.~~

~~(c) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to serve in a
Mini-Trial in a family case, the person appointed shall be a lawyer in good standing and
shall have been admitted to practice for at least ten years, during which a substantial
portion of the lawyer's practice shall have been in family cases.~~

~~Section 16. Rule 31 Case Evaluators~~

~~(a) The parties may select any lawyer in good standing to act as an evaluator in general civil or family cases.~~

~~(b) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an evaluator in a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.~~

~~(c) Where the court, pursuant to Section 4, appoints a Rule 31 Neutral to act as an evaluator in a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which a substantial portion of the lawyer's practice shall have been in family cases.~~

PROVISIONS REGARDING QUALIFICATIONS AND TRAINING OF RULE 31 MEDIATORS

~~Section 17.~~Section 14. Rule 31 Mediators

No person shall act as a Rule 31 Mediator without first being listed by the ADRC. To be listed, ~~Rule 31 Mediators~~an applicant must:

1) submit an application and pay application fees set by the ADRC ~~and must~~;

2) comply with the qualification and training requirements set forth in this section. All training must have been approved by the ADRC as set ~~forth~~ in ~~section~~subsection (f) ~~below~~ and must have been completed within the ~~fifteen~~six years immediately preceding the application seeking Rule 31 Mediator listing. ~~[Amended April 24, 2009]~~;

~~(a) Rule 31 Mediators in General Civil Cases.~~

~~(1) To be listed by the ADRC as a Rule 31 Mediator in general civil cases, one must:~~

~~(A) be of good moral character as evidenced by two references accompanying application for listing and~~3) certify in writing an intention to comply with the conditions and obligations imposed by Rule 31, including those requirements related to pro bono obligations;

4) submit two character references evidencing good character and suitability for the practice of mediation;

5) disclose convictions for any felony or for a misdemeanor involving violence, dishonesty or false statement if such conviction is ten years old or less as provided in Tennessee Rule of Evidence 609;

6) If the applicant's profession requires licensing, the applicant shall also provide documentation that the applicant is in good standing or possesses a valid license with the Board or Agency charged with issuing licenses to practice in the applicant's profession. Failure to pay board or agency dues when there is no intent by the applicant to practice in the licensed occupation or profession in the jurisdiction of licensure shall not constitute a lack of good standing for purposes of Rule 31;

7) If the applicant has held a professional standing which requires licensing, the applicant shall also provide documentation of the applicant's complete disciplinary history including closed and open grievances for each license the applicant has held. The applicant must not have a disciplinary history with the Board or Agency charged with issuing licenses to practice in any such profession that would demonstrate an unsuitability for the practice of mediation. If the applicant has been licensed at one time and is no longer licensed in his/her occupation or profession due to disciplinary reasons, the applicant will not be approved for listing and may reapply when his her license has been restored.

(a) Rule 31 Mediators in General Civil Cases.

(1) To be listed by the ADRC as a Rule 31 Mediator in general civil cases, one must ~~(B)~~ also:

(i) meet one of the following education/work experience requirements:

(A) have a graduate degree plus four years of full time ~~practical work experience, or a baccalaureate degree plus six years of full time practical~~ work experience. Full time ~~practical~~ work experience shall be defined as 35 hours or more of work per week;

(B) have a baccalaureate degree plus six years of full time work experience. Full time work experience shall be defined as 35 hours or more of work per week.

and

~~(C)~~(ii) complete and provide proof of attendance of 40 hours of general mediation training which includes the curriculum components specified by the ADRC for Rule 31 Mediators in general civil cases.

~~(2) If the applicant's profession requires licensing, the applicant shall also:~~

~~(A) be in good standing with the Board or Agency charged with issuing licenses to practice in the applicant's profession. The failure to take or pass an examination required by the Board or Agency will not affect the applicant's standing to apply for listing as a Rule 31 Mediator. A disbarred lawyer or any other professional with a suspended or revoked license may reapply when the applicant has been readmitted to practice. Misconduct shall not include failure to pay board or agency dues when there is no intent by the applicant to practice in the licensed occupation or profession in any jurisdiction other than Tennessee.~~

~~(B) not be the subject of three or more open complaints made to the Board or Agency charged with hearing complaints about the applicant's professional conduct. If there are three or more open complaints with the relevant Board or Agency, the application will be deferred by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist.~~

(b) Rule 31 Mediators in Family Cases.

(1) To be listed as a Rule 31 Mediator in family cases, one must also:

(i) meet one of the following education/work experience requirements:

~~(A) comply with the requirements set forth in Section 17(a)(1)(A) and 17(a)(2)(A) and 17(a)(2)(B) above; and~~

~~(B) be a Certified Public Accountant, have a graduate degree, or (A) have a baccalaureate degree with ten years full time ~~practical~~ work experience in psychiatry, psychology, counseling, family mediation, social work, education, law, or accounting. Full time ~~practical~~ work experience shall be defined as 35 hours or more of work per week;~~

~~(C) (B) be a Certified Public Accountant and~~ have four years of full time ~~practical~~ work experience in psychiatry, psychology, counseling, social work, education, law, or accounting. Full time ~~practical~~ work experience shall be defined as 35 hours or more of work per week;

~~(D) (C) have a graduate degree and have four years of full time work experience in psychiatry, psychology, counseling, social work, education, law, or accounting. Full time work experience shall be defined as 35 hours or more of work per week.~~

(ii) complete and provide proof of attendance of 40 hours of training in family mediation which includes the curriculum components specified by the ADRC for Rule 31 Mediators

in family cases and which also includes four hours of training in screening for and dealing with domestic violence in the mediation context; and

~~(E)~~(iii) complete and provide proof of attendance of six additional hours of training in Tennessee family law and court procedure. It is provided, however, that the ADRC may ~~waive~~approve fulfillment of this requirement for applicants who have ~~completed~~substantially complied with completion of at least six hours of ADRC-approved training devoted to Tennessee family law and/or procedure within the three-year period immediately prior to the completion of the requirements of Section ~~1714(c)(3)(A1)(i)~~ through ~~(I)-xii~~ of this Rule.

(c) Content of Training Programs for Rule 31 Mediators.

(1) Before being listed either as Rule 31 General Civil Mediators or as Rule 31 Family Mediators, applicants shall complete a course of training consisting of not less than 40 hours, including the following subjects:

(~~A~~i) Rule 31 and procedures and standards adopted thereunder;

(~~B~~ii) conflict resolution concepts;

~~(C)~~(iii) negotiation dynamics;

(~~D~~iv) court process;

(~~E~~v) mediation process and techniques;

(~~F~~vi) communication skills;

(~~G~~vii) standards of conduct and ethics for Rule 31 Neutrals;

(~~H~~viii) community resources and referral process;

(~~I~~x) cultural and personal background factors;

(~~J~~x) attorneys and mediation;

(~~K~~xi) the ~~unrepresented~~self-represented party and mediation; and

(~~L~~xii) confidentiality requirements, and any exceptions thereto as required by law.

(d) Waiver of Training Requirements for Certain Rule 31 Mediators.

(1) Upon petition to and acceptance by the ADRC, the following persons may be qualified as Rule 31 Mediators without first complying with ~~the qualification and~~ training requirements set forth in Section ~~4714~~(a), (b), or (c): of this Rule if they satisfy the work experience requirements as noted in this section:

(i) persons holding graduate degrees who have passed a mediation course which awards at least three semester hours credit and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and ~~who have four~~that the mediation course has been completed within the six years ~~of full-time practical work experience;~~immediately preceding the application seeking Rule 31 Mediator listing;

(ii) trained mediators who ~~substantially~~ comply with the qualifications set forth for Rule 31 Mediators in general civil cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the assistance of the AOC Programs Manager, provided that their training be the substantial equivalent of that required under this Rule and that the training has been completed within ~~fifteensix~~ years prior to the application;

(iii) if a trained mediator has complied with the qualifications for approval as a mediator by another state and such approval has been granted, and if the mediator is in good standing in such state at the time of the application for approval in Tennessee, the ADRC may, upon review of the qualifications of the applicant, waive such training requirements as required by Section ~~4714~~ of this Rule; and

(iv) alternative dispute resolution professors at accredited law schools or graduate schools who have taught a mediation course which awards at least three semester hours of credit for at least two semesters and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and ~~who have four years of full-time practical work experience. [Amended April 24, 2009]~~that the applicant has taught the mediation course within the six years immediately preceding the application seeking Rule 31 Mediator listing.

(2) Applicants for qualification as a Rule 31 Mediator under this subsection will be assessed an additional application fee for this review of their applications by the ADRC.

(e) Procedure for Dual-Listing Rule 31 Mediators. The ADRC may dually list an individual listed as a Family Mediator or as a General Civil Mediator if that individual has met the requirements of Section ~~4714~~(a), (b) or (c) of this Rule and has obtained such additional training in general civil or family mediation as in the judgment and discretion

of the ADRC qualifies that individual to be dually listed as a General Civil Mediator and as a Family Mediator.

Completion of an ADRC-approved 24-hour Civil to Family Cross-Over Training will satisfy the training requirement for listed Rule 31 General Civil Mediators applying for Family Listing. Taking the full 46-hour Family Training is not required for Dual Listing.

Completion of an ADRC-approved 16-hour Family to Civil Cross-Over Training will satisfy the training requirement for listed Rule 31 Family Mediators applying for General Civil Listing. Taking the full 40-hour General Civil Training is not required for Dual Listing.

(f) Trainer Procedure for Obtaining Curriculum Approval and Grievance

Procedure. Prior to offering their courses for initial listing training, or training to be listed as a Rule 31 Family Mediator with the designation of "specially trained in domestic violence issues", all trainers are required to obtain ADRC approval of their curricula. The trainers shall apply to the ADRC for curricula approval on forms approved by the ADRC. Any complaint regarding an ADRC approved Rule 31 initial listing training or training for special designation in domestic violence, shall be sent to the AOC Programs Manager who shall forward the same to the Training Committee appointed by the Chair of the ADRC for review. The Training Committee shall review the Complaint and recommend and any action it deems appropriate to the ADRC for final determination of action to be taken, if any.

(g) Procedure for Rule 31 Family Mediator's Additional Designation as "Specially Trained in Domestic Violence Issues." To obtain a designation as "Specially Trained in Domestic Violence Issues", the listed Rule 31 ~~listed~~ Family Mediator must have completed a twelve-hour course on domestic violence issues approved by the ~~Training Committee of the ADRC~~ procedures outlined in subsection (f) and shall provide to the ADRC proof of attendance at the approved course. The listed Rule 31 Family Mediator may request a waiver of course attendance based upon training and/or experience determined by the ADRC to be substantially equivalent to the ~~course~~ twelve hours of domestic violence topics approved by the ~~Training Committee~~ ADRC.

(h) ~~Application By Retiring or Resigning Judge~~ Full-Time Judicial Officer ~~or and Full-Time Court Clerk~~ prohibited from being for Listing ~~Listed~~ as Rule 31 Mediator. A ~~sitting judge~~ full-time Judicial Officer or ~~sitting~~ full-time court clerk ~~whose retirement or resignation is pending~~ may ~~not apply to~~ be listed as a Rule 31 Mediator. For purposes of this Rule, a ~~sitting judge~~ full-time Judicial Officer includes ~~a full-time judge, full-time referee, a full-time administrative law judge, or a senior judge~~ all full-time judges designated in the Tennessee Code of Judicial Conduct, Rule 10, Part I. Application, of

~~the Rules of the Tennessee Supreme Court. For the purpose of this Rule, a sitting full-time court clerk includes a full-time clerk and master, a full-time circuit court clerk, a full-time criminal court clerk, a full-time juvenile court clerk, ~~or~~ and a full-time general sessions court clerk. Upon the ADRG's determination that a judge-applicant or a clerk-applicant meets the qualifications and training requirements set forth in this Rule, the ADRG shall notify the judge-applicant or clerk-applicant in writing that the requirements for being listed have been met. The Commission shall not list a judge-applicant full-time Judicial Officer or full-time court clerk-applicant as a Rule 31 Mediator, until the effective date of the judge-applicant's or clerk-applicant's retirement or resignation, at which time the judge-applicant or clerk-applicant may request in writing to be listed by the ADRG as a Rule 31 Mediator. The ADRG shall then place the judge-applicant or clerk-applicant on the list of Rule 31 Mediators. This provision does not affect the status of any judge who has been granted inactive status as a Rule 31 Mediator prior to the adoption of this provision. [Section 17(h) amended April 24, 2009]~~

(i) Listing of Part-time Judicial Officers. ~~If the applicant otherwise meets the requirements of this Rule, the part-time judicial officers Judicial Officers designated ~~below~~ in the Tennessee Code of Judicial Conduct, Rule 10, Part I, Application, of the Rules of the Tennessee Supreme Court may be listed as active Rule 31 Mediators, subject to the ~~following~~ limitations found in Tenn. Sup. Ct. R. 10, if they otherwise meet the requirements of this Rule. For the purpose of this provision, "part-time judicial officer " means a judicial officer who serves by election or continuing appointment in a judicial office created as a part-time position.~~

~~(1) Part time Municipal Judge. A part-time municipal judge listed as a Rule 31 Mediator shall not conduct a mediation in any proceeding in which the mediator has served as a judge or in any other proceeding related thereto.~~

~~(2) Part-time Juvenile Referee. A part-time juvenile referee listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator served as a referee or in any other proceeding related thereto, or (B) any proceeding in which a party was or is involved in a case in any like manner before the referee.~~

~~(3) Part-time Divorce Referee. A part-time divorce referee listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator has served as a referee or in any other proceeding related thereto, or (B) any other proceeding in which a party was or is involved in a case pending in any manner before the referee.~~

~~(4) Part-time Referee. A part-time referee listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator has served as a referee or in~~

~~any other proceeding related thereto, or (B) any other proceeding in which a party was or is involved in a case pending in any manner before the referee.~~

~~(5) Part-time General Sessions Judge. A part-time general sessions judge listed as a Rule 31 Mediator shall not conduct a mediation in any proceeding in which the mediator served as a judge or in any proceeding related thereto.~~

~~(6) Part-time Juvenile Judge. A part-time juvenile judge listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator has served as a judge or in any other proceeding related thereto, or (B) any other proceeding pending before a court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves.~~

~~(7) Part-time Special Master. A part-time special master listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator has served as a special master or in any other proceeding related thereto, or (B) any other proceeding in which a party was or is involved in a case pending in any manner before the special master.~~

~~(8) Part-time Administrative Law Judge. A part-time administrative law judge listed as a Rule 31 Mediator shall not conduct a mediation in (A) any proceeding in which the mediator served as an administrative law judge or in any other proceeding related thereto, or (B) any other proceeding in which a party was or is involved in a case pending in any manner before the administrative law judge.~~

Section 1815. Additional Obligations of Rule 31 Mediators

Rule 31 Mediators must maintain a current [mailing address, e-mail address, and phone number](#) with the Programs Manager of the Administrative Office of the Courts. Any change of [mailing address, e-mail address, or phone number](#) must be provided within thirty days of such change.

(a) [Continuing Mediation Education](#)

To remain listed by the ADRC, Rule 31 Mediators shall comply with the following continuing mediation education (["CME"](#)) requirements:

(1) Courses ~~approved~~ for continuing education under this Rule [may](#) include but are not limited to, courses approved by the Commission on Continuing Legal Education & Specialization, programs approved by professional licensing agencies, programs provided by not-for-profit community mediation centers and not-for-profit mediation associations.

(2) Rule 31 Mediators must complete six hours of continuing mediation education every two years.

(A) General Civil Mediators - The six hours shall consist of: (i) Three hours in mediation continuing education, of which at least one hour shall be related to [mediation ethics](#), and (ii) Three hours general continuing education.

(B) Family Mediators - The six hours shall consist of: (i) Three hours in mediation continuing education, of which at least one hour shall be related to [mediation ethics](#), and (ii) Three hours continuing education in family law.

~~(C) For dually listed Rule 31 Mediators who were initially listed in the same year, meeting~~

~~(iii) Meeting the Rule 31 Family Mediator ~~Listing~~[listing](#) continuing education requirements will also meet the Rule 31 General Civil Mediator listing [continuing education](#) requirements. [For dually listed Rule 31 Mediators who were not initially listed in the same year, the Mediator shall complete the hours required in Section 15\(a\)\(2\)\(i-ii\) of this Rule every two years based on the initial listing year of the Family listing.](#)~~

(3) Rule 31 Mediators who are attorneys are not exempt from the continuing mediation education requirements of Rule 31 Section ~~15~~[15\(a\) of this Rule](#) as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(c).

~~(4) [Failure to comply with continuing education requirements by March 31 following the year the hours were due will result in the lapse of the Rule 31 Mediator's listing. Mediators cannot choose to have their listing\(s\) lapse and then have the listing\(s\) re-activated upon completion of CME hours that were past due.](#)~~

~~(5) [A mediator whose credentials have lapsed for failure to comply with CME requirements must re-apply to the ADRC for listing and must have taken all required training per section 14. If previous training was completed prior to six years from the re-application for listing, it is no longer valid and the applicant must re-take the training pursuant section 14. CME hours for dually listed mediators are due every two years based on the initial listing year of the Family listing. Failure to renew or comply with CME requirements based on the initial listing year of the Family listing will result in the lapse of credentials for both listings. Per \(a\)\(2\)\(iii\) of this section, meeting the Rule 31 Family Mediator listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing continuing education requirements.](#)~~

(b) Annual Renewal of Rule 31 Mediator Status. As a condition of continued listing, each Rule 31 Mediator must file an annual renewal form with the AOC Programs Manager ~~attesting~~stating that he/she is in good standing with any professional licensing agency or organization, if applicable, provide proof of attendance/completion of required continuing mediation education, and must pay the annual registration fee set by the ADRC.

~~(c) Inactive Status.~~ If all requirements of a Rule 31 Mediator's annual renewal have not been completed by March 31 of the renewal year, then the Rule 31 Mediator's listing lapses.

~~(1) Any Rule 31 Mediator who is prohibited by reason of employment from practicing mediation during such employment may apply to the ADRC for inactive status. If approved by the ADRC, such Rule 31 Mediator shall be placed on inactive status during such employment. While on inactive status, the Rule 31 Mediator will not be required to pay the annual fee but must comply with the continuing education requirements.~~

~~(2) Any Rule 31 Mediator requesting inactive status or failing to comply with the Rule 31 Mediator's annual renewal requirements will be placed on inactive status.~~

~~(3) A Rule 31 Mediator placed on inactive status may apply to the ADRC for reactivation. To be approved for reactivation, the Rule 31 Mediator must complete all the continuing mediation education required by Rule 31 during the period of inactive status and must pay the renewal fee for the year in which the Rule 31 Mediator reactivates. The Programs Manager will review the request, determine if requirements have been met and, if met, place the Rule 31 Mediator on active status. If the Program Manager denies reactivation, that decision may be appealed to the ADRC. A Rule 31 Mediator placed on inactive status for at least fifteen consecutive calendar years will not be eligible to apply to the ADRC for reactivation. After fifteen consecutive calendar years, the Rule 31 Mediator's listing will be terminated and the Rule 31 Mediator will have to fulfill listing requirements pursuant to Rule 31, Section 17. [Amended July 1, 2015]~~

~~(d)~~(c) Pro Bono Service. As a condition of continued listing, each Rule 31 Mediator ~~must be available to~~shall, if requested by a Court, conduct three pro bono mediations per year, not to exceed 20 total hours for all mediations. At the initiation of a pro bono mediation, the ~~court~~Court may, upon a showing by one or more parties of an inability to pay, direct that the Rule 31 Mediator serve without pay. No Rule 31 Mediator will be required to conduct more than three pro bono proceedings or serve pro bono for more than 20 hours in any continuous 12-month period. A Rule 31 Mediator should aspire to render a minimum of fifty (50) hours of pro bono mediation services per year.

(e(d) Reports Required of Rule 31 Mediators. In addition to compliance with Section 5 of this Rule, Rule 31 Mediators shall be required to submit to the ADRC reports of any data requested by the ADRC as to ~~anyall~~ mediations conducted by a Rule 31 Mediator, including those mediations which are not ~~subject to Rule 31.~~ Rule 31 Mediations. The report forms will be available on the AOC website and from the AOC. Such reports are confidential, not subject to disclosure for inspection or copying and will be maintained by the AOC for statistical compilation and analysis purposes only.

(f(e) Procedure Upon Revocation or Suspension.

(1) All listed Rule 31 Mediators subject to the provisions of this Rule, upon being subjected to revocation or suspension by any professional licensing agency or organization, within or outside the State of Tennessee, shall promptly inform the ADRC of such action in the manner prescribed herein.

(2) The listed Rule 31 Mediator, within 14 days of receipt of being advised of such revocation or suspension by the professional licensing agency or organization, shall provide notification of such action to the ADRC. Such notification to the ADRC shall include a copy of any order or directive by the professional licensing agency or organization setting forth the nature and duration of such revocation or suspension.

(3) In the event the discipline imposed by the professional licensing agency or organization has been stayed, any discipline imposed by the ADRC shall be deferred until such stay expires.

(4) ~~Thirty~~ Within 30 days after notification as provided above, the ADRC shall impose identical discipline unless the listed Rule 31 Mediator appeals to the ADRC the imposition of such discipline. The ADRC shall impose identical discipline unless it finds upon the face of the record upon which the discipline is predicated:

(A*i*) That the procedure clearly was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(B*ii*) That there clearly was such an infirmity of proof establishing the misconduct as to give rise to the conviction that the ADRC could not, consistent with its duty, accept as final the conclusion on that subject; or

(G*iii*) That the misconduct established clearly warrants substantially different discipline.

Where the ADRC determines that any of said elements exist, the ADRC shall enter such other order as it deems appropriate.

(5) In all other respects, a final adjudication by the professional licensing agency or organization that the listed Rule 31 Mediator has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding by the ADRC.

(6) If the professional licensing agency or organization rescinds or otherwise terminates the revocation or suspension of a formerly listed Rule 31 Mediator, a certified copy of the agency's or organization's rescission or termination order shall constitute clear and convincing evidence of the same. Upon the removal of such revocation or suspension, an individual formerly listed as a Rule 31 Mediator under this Rule shall be entitled to apply to the ~~Credentials Committee of the~~ ADRC for listing, under the then applicable criteria for listing.

PROVISIONS FOR ADMINISTRATION OF ~~THE~~ RULE 31

Section ~~19~~16. Alternative Dispute Resolution Commission

(a) The ADRC members shall be appointed by the Supreme Court to three-year terms. No member who has served two successive three-year terms shall be eligible for reappointment to the ADRC until three years after the termination of the most recent term. The Court shall appoint one of the ADRC's members as the Chair for a two-year term. The ADRC shall have the responsibility for:

(1) Reviewing and revising, if appropriate, the standards for listing Rule 31 Mediators;

(2) Determining the procedure for listing Rule 31 Mediators;

(3) Preparing and disseminating appropriate publications containing details regarding Rule 31 ~~ADR Proceedings~~Mediations;

(4) Reviewing and revising, as and when appropriate, the standards of professional conduct that shall be required of Rule 31 ~~Neutrals~~Mediators;

(5) Reviewing the content of training programs to determine whether they meet the standards for qualification under Rule 31;

(6) Assuring that all listed Rule 31 Mediators have participated in approved training, have complied with qualification requirements, and have certified their agreement to

follow the guidelines and applicable standards and their understanding of the sanctions for failure to comply;

(7) Reviewing and, where appropriate, approving applications for listing of Rule 31 Mediators;

(8) Evaluating the success of Rule 31 ~~ADR Proceedings~~Mediations based on participant satisfaction, quality of results, and effect on case management;

(9) Evaluating and reviewing each listed Rule 31 Mediator for continued compliance with the established standards and requirements for continued listing;

(10) Suggesting to the Supreme Court rules and amendments of rules regarding alternative dispute resolution proceedings; ~~and~~

(11) Setting and collecting appropriate training, listing, and ~~registration fees, renewal fees; and~~

(12) Taking such other steps as may be reasonably necessary to establish, maintain and improve the alternative dispute resolution program in Tennessee.

(b) The Commission may create advisory committees to study specific issues identified by the Commission and to make such recommendations to the Commission as the members of the advisory committees deem appropriate.

The Commission may invite non-Commission members, including representatives from other branches of government, lawyers, mediators, and members of the public, to attend meetings and to participate as members of advisory committees to help further the work of the Commission.

(c) The day-to-day work of the ADRC shall be conducted by the Programs Manager of the Administrative Office of the Courts who shall be responsible for:

(1) Processing applications for inclusion on ~~list~~the list of Rule 31 Mediators in accordance with procedures recommended by the ADRC and approved by the Supreme Court;

(2) Processing annual renewal forms from Rule 31 Mediators and approving their continued qualification for Rule 31 listing;

(3) Taking such steps as may be necessary to provide ~~list~~the list of Rule 31 Mediators to the appropriate clerks of court and to maintain a current list of Rule 31

~~mediators~~[Mediators](#) on the AOC website.

- (4) Coordinating, approving, or providing training to Rule 31 Mediators;
- (5) Processing grievances against Rule 31 Mediators;

- (6) Coordinating the work of and assisting the ADRC;

- (7) Assisting in the evaluation of ~~Rule 31~~ alternative dispute resolution programs; and

- (8) Taking such other steps in conjunction with the Supreme Court and the ADRC as may be reasonably necessary to establish, maintain and improve the ~~court-~~
~~annexed~~[alternative](#) dispute resolution program in Tennessee.

RULE 31A: ALTERNATIVE DISPUTE RESOLUTION – CASE EVALUATION, JUDICIAL SETTLEMENT CONFERENCE, MINI-TRIAL, NON-BINDING ARBITRATION, AND SUMMARY JURY TRIAL.

GENERAL PROVISIONS

Section 1. Application. The standards and procedures adopted under this Rule apply only to Rule 31A ADR Proceedings and only to dispute resolution neutrals serving pursuant to this Rule. They do not affect or address the general practice of alternative dispute resolution in the private sector outside the ambit of Rule 31A. Pursuant to the provisions of this Rule, a court may order the parties to an Eligible Civil Action to participate in a Rule 31A ADR Proceeding. Rule 31A ADR Proceedings are subject to the supervision of the Court in which the Eligible Civil Action is pending.

Section 2. Definitions.

(a) "Case Evaluation" as set forth in Sections 15 and 18 of this Rule, is a process in which a neutral person or three-person panel, called an evaluator or evaluation panel, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute, as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer an evaluation of the case.

(b) "Court" means any court exercising civil jurisdiction subject to the Tennessee Supreme Court Rules.

(c) "Days" for purposes of the deadlines imposed by this Rule, means calendar days.

(d) "Eligible Civil Action" includes any civil action filed in a Court in which the Court has continuing jurisdiction, except civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile delinquency cases. The term "Extraordinary writs" does not encompass claims or applications for injunctive relief.

(e) "Judicial Officer" serves by election or continuing appointment in a judicial office, such as: 1) a sitting judge in a Court; or 2) a Juvenile Referee, Divorce Referee, Referee, and Special Master.

(f) "Judicial Settlement Conference" as set forth in Section 16 of this Rule, is a mediation conducted by a Judicial Officer selected by the Court.

(g) "Mini-Trial" as set forth in Sections 14 and 19 of this Rule, is a settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.

(h) "Non-Binding Arbitration" as set forth in Sections 13 and 17 of this Rule, is a process in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is non-binding.

(i) "Order of Reference" is a written or standing order of a court entered in or related to an Eligible Civil Action in accordance with Section 3 of this Rule directing the parties to participate in a Rule 31A ADR Proceeding.

(j) "Rule 31A ADR Proceeding" is an alternative dispute resolution proceeding in or related to an Eligible Civil Action, including, but not limited to "Case Evaluations", "Judicial Settlement Conferences", "Mini-Trials", "Non-Binding Arbitrations", or "Summary Jury Trials".

(k) A "Rule 31A Neutral" is any impartial person, licensed as an attorney, who acts as a guide in a Rule 31A ADR Proceeding. Rule 31A Neutrals are required to be licensed attorneys.

(l) A "Summary Jury Trial" as set forth in Section 20 of this Rule, is an abbreviated trial with a jury in which litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the

jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31A ADR PROCEEDINGS

Section 3. Initiation/Order of Reference

(a) Rule 31A ADR Proceedings may be initiated in any Eligible Civil Action by the entry of an Order of Reference.

(b) Upon motion of either party, or upon its own initiative, a Court, by Order of Reference, may order the parties in an Eligible Civil Action to participate in a Judicial Settlement Conference. With the consent of the parties, trial courts are also authorized to order the parties to participate in a Case Evaluation.

(c) Any Order of Reference made on the Court's own initiative shall be subject to review on motion by any party and shall be vacated should the Court determine in its sound discretion that the referred case is not appropriate for a Rule 31A ADR Proceeding or is not likely to benefit from submission to a Rule 31A ADR Proceeding. Pending disposition of any such motion, the Rule 31A ADR Proceeding shall be stayed without the need for a court order.

(d) Upon motion of a party, or upon its own initiative and with the consent of all parties, a Court, by Order of Reference, may order the parties to participate in Non-Binding Arbitration, Mini-Trial, Summary Jury Trial, or other appropriate alternative dispute resolution proceedings.

(e) All Rule 31A ADR Proceedings shall be concluded as efficiently and expeditiously as possible given the circumstances of the case.

Section 4. Selection of Rule 31A Neutrals

(a) Within 15 days of the date of an Order of Reference, with the exception of an Order of Reference for a Judicial Settlement Conference, the parties must notify the Court of the Rule 31A Neutral or Rule 31A Neutrals agreed to by the parties or of their inability to agree on a Rule 31A Neutral or Rule 31A Neutrals.

(b) When the parties cannot agree on the selection of a Rule 31A Neutral or Neutrals, the Court shall nominate a Rule 31A Neutral or Neutrals in accordance with the following procedure:

(1) In a Rule 31A Proceeding in which a single Rule 31A Neutral will serve, the Court shall designate three Rule 31A Neutrals having the appropriate qualifications as set forth in this Rule and one additional Rule 31A Neutral for each additional party over two.

(2) In a Case Evaluation or Non-Binding Arbitration before a panel of three or more Rule 31A Neutrals, the court shall designate three Rule 31A Neutrals, meeting the qualifications as set forth in this for each seat on the panel and one additional Rule 31A Neutral for each seat on the panel for each additional party over two.

(3) After receiving the Court's nominations, each party shall strike one name from the Court's list for each Rule 31A Neutral being selected. The Court then shall appoint the remaining Rule 31A Neutral or Neutrals unless a valid and timely objection is made within 10 days of the Court's appointment. In the event the designated Rule 31A Neutral cannot serve, the process will be repeated to the extent necessary.

(4) The Court's nomination of Rule 31A Neutrals shall be fairly distributed among those who meet the qualifications set forth in Rule 31A Sections 14-18 of this Rule, unless the matter requires particular expertise not possessed by all who meet those qualifications.

Section 5. Reports

At the conclusion of a Rule 31A ADR Proceeding, the Rule 31A Neutral shall submit a final report to the Court by filing same with the clerk of the court. The final report shall state only: (i) the name of the parties who appeared and participated in the Rule 31A ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31A Neutral requests that the costs of the Rule 31A Neutral's services be charged as court costs. The report shall be submitted within the time specified by the court in the Order of Reference. In the event there is no Order of Reference or the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the conclusion of the Rule 31A ADR Proceeding or within the time period specified by the Court.

Section 6. Participation of Attorneys

Attorneys may participate with their clients during Rule 31A ADR Proceedings.

Section 7. Confidential and Inadmissible Evidence

Evidence of conduct, information disclosed, or statements made in the course of a Rule 31A ADR Proceeding conducted by a Rule 31A Neutral is confidential to the extent provided in the Order of Reference or as provided by other law or rule of this State. Such evidence and shall be inadmissible to the same extent as conduct or statements

are inadmissible under Tennessee Rule of Evidence 408. No Rule 31A Neutral may be compelled to testify by deposition or otherwise regarding such conduct, information, or statements. A written mediated agreement is admissible to enforce the understanding of the parties.

Section 8. Costs

The costs of any Rule 31A ADR Proceeding, including the costs of the services of a Rule 31A Neutral may, at the request of the Rule 31A Neutral, be charged as court costs. The request to charge the costs of the services of the Rule 31A Neutral(s) should be submitted to the Court by filing same with the clerk of the court. If the parties appeal to the appellate court(s), the parties shall advise the appellate court in their briefs whether the Rule 31A Neutral(s) requested that the cost of the Rule 31A Neutral's services be included in the court costs.

The Court may, in its sound discretion, waive or reduce the costs of a Rule 31A ADR Proceeding.

GENERAL PROVISIONS APPLICABLE TO ALL RULE 31A NEUTRALS

Section 9. Standards of Professional Conduct for Rule 31A Neutrals

(a) Rule 31A Neutrals shall avoid the appearance of impropriety.

(b) Rule 31A Neutrals shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31A ADR Proceedings, including but not limited to the Standards of Professional Conduct for Covered Neutrals attached as Appendix A hereto. Under Tenn. Sup. Ct. R. 8, RPC 2.4(c)(9), violation of any of these rules and procedures by any Rule 31A Neutral who is an attorney constitutes a violation of the Rules of Professional Conduct **and should be reported directly to Board of Professional Responsibility.**

(c) The Standards of Professional Conduct for Covered Neutrals attached as Appendix A are incorporated into this Rule.

Section 10. Obligations of Rule 31A Neutrals

(a) Before the commencement of any Rule 31A ADR Proceeding, the Rule 31A Neutral shall:

(1) Make a full and written disclosure of any known relationships with the parties or their counsel which may affect or give an appearance of affecting the neutrality of the Rule 31A Neutral.

(2) Advise the parties regarding the Rule 31A Neutral's qualifications and experience.

(3) Discuss with the parties the rules and procedures that will be followed in the Rule 31A ADR Proceeding.

(b) During Rule 31A ADR Proceedings, the Rule 31A Neutral shall:

(1) Advise the Court in which the proceeding is pending if the Rule 31A ADR proceeding is, or is likely to become, inappropriate, unfair, or detrimental in the referred action.

(2) Maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(3) Refrain from giving legal advice, while serving as a Rule 31A Neutral, to the parties in the Rule 31A ADR Proceeding. However, while a Rule 31A Neutral should not offer a firm opinion as to how the court in which a case has been filed will resolve the case, a Rule 31A Neutral may point out possible outcomes of the case and may indicate a personal view of the persuasiveness of a particular claim or defense. Moreover, an "evaluation" pursuant to a Case Evaluation, an "award" pursuant to a Non-Binding Arbitration, or an "advisory verdict" pursuant to a Summary Jury Trial will not be considered to be "legal advice" for purposes of this Rule.

(c) During and following Rule 31A ADR Proceedings, Rule 31A Neutrals shall:

(1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master, or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31A ADR Proceeding was conducted.

(2) Provide a timely report as required under section 5 of this Rule.

(3) Avoid any appearance of impropriety in the Rule 31A Neutral's relationship with any member of the judiciary or the judiciary's staff with regard to the Rule 31A ADR Proceeding or the results of the Rule 31A ADR Proceeding.

(4) Preserve and maintain the confidentiality of all information obtained during the Rule 31A ADR Proceeding and shall not divulge information obtained by the Rule 31A Neutral during the course of Rule 31A ADR Proceeding without the consent of the parties, except as otherwise may be required by law.

(d) A Rule 31A Neutral shall not be called as a witness in any proceeding to enforce any terms of the resulting agreement.

Section 11. Privilege and Immunity

Activity of Rule 31A Neutrals in the course of Rule 31A ADR Proceedings shall be deemed to be privileged and the performance of a judicial function and for such acts Rule 31A Neutrals shall be entitled to judicial immunity.

Section 12. Compensation

Rule 31A Neutrals are entitled to be compensated at a reasonable rate for participation in court-ordered alternative dispute resolution proceedings.

PROVISIONS REGARDING QUALIFICATIONS OF RULE 31A NEUTRALS

Section 13. Rule 31A Neutrals in Rule 31A Non-Binding Arbitration

(a) The Parties may select any lawyer in good standing to act as an arbitrator in a Non-Binding Arbitration.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an arbitrator in a Non-Binding Arbitration of a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an arbitrator in a Non-Binding Arbitration of a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which time a substantial portion of the lawyer's practice shall have been family cases.

Section 14. Rule 31A Neutrals Presiding in Mini-Trials

(a) The Parties may select any lawyer in good standing and admitted to practice to act as a Rule 31A Neutral in a Mini-Trial.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as a Rule 31A Neutral in a Mini-Trial in a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as a Rule 31 Neutral in a Mini-Trial in a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which a substantial portion of the lawyer's practice shall have been in family cases.

Section 15. Rule 31 Case Evaluators

(a) The parties may select any lawyer in good standing to act as an evaluator in general civil or family cases.

(b) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an evaluator in a general civil case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years.

(c) Where the Court, pursuant to Section 4 of this Rule, appoints a Rule 31A Neutral to act as an evaluator in a family case, the person appointed shall be a lawyer in good standing and shall have been admitted to practice for at least ten years, during which a substantial portion of the lawyer's practice shall have been in family cases.

PROVISIONS RELATIVE TO PARTICULAR RULE ~~31~~31A ADR PROCEEDINGS ~~OTHER THAN MEDIATION~~

Section ~~20~~16. Judicial Settlement Conferences

Trial courts are authorized to conduct Judicial Settlement Conferences. However, a judge who participates in a ~~judicial settlement conference~~Judicial Settlement Conference is precluded from presiding over the trial or any other contested issues in that matter.

Section ~~21~~17. Non-Binding Arbitration

Trial courts, with the consent of the parties, are authorized to order Non-Binding Arbitration. ~~Attached as Appendix B is a form order for use by parties and courts in fashioning their own orders for Non-Binding Arbitration.~~Rule 31A Neutrals serving in Non-Binding Arbitrations will be subject to Appendix A, Standards of Professional Conduct for ~~Rule 31~~Covered Neutrals.

Section ~~22~~18. Case Evaluation

Trial courts, with the consent of the parties, are authorized to order a Case Evaluation. ~~Attached as Appendix C is a form order for use by trial judges in fashioning orders~~

~~directing participation in Case Evaluations.~~ [Rule 31A](#) Neutrals serving in Case Evaluations will be subject to Appendix A, Standards of [Professional](#) Conduct for ~~Rule 31~~[Covered](#) Neutrals.

Section ~~23~~[19](#). Mini-Trial

Mini-Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the ~~court~~[Court](#), design a procedure which is suited for the Eligible Civil Action. ~~Attached as Appendix D is a form order for use by the parties in fashioning an order for a Mini-Trial.~~ [Rule 31A](#) Neutrals serving in Mini-Trials will be subject to Appendix A, Standards of [Professional](#) Conduct for ~~Rule 31~~[Covered](#) Neutrals.

Section ~~24~~[20](#). Summary Jury Trial

Summary Jury Trials may be ordered only with the consent of the parties. It is intended that this ADR process be flexible so that counsel, in consultation with the ~~court~~[Court](#), can design a procedure which is suited for the Eligible Civil Action. ~~Attached as Appendix E is a form order for use by the parties and trial judge~~ [Rule 31A](#) Neutrals ~~serving in fashioning an order for~~ Summary Jury ~~Trial.~~ Trials will be subject to Appendix A, Standards of Professional Conduct for Covered Neutrals.

APPENDIX A. Standards of Professional Conduct for ~~Rule 31~~Covered Neutrals

Section 1. Preamble

(a) Scope; Purpose. These ~~rules~~standards are intended to instill and promote public confidence in the Alternative Dispute Resolution process under Tennessee Supreme Court ~~Rule~~Rules 31 and 31A and to be a guide to Neutrals serving under the same. The term “Neutral” as used in these standards refers only to those serving under Rule 31 or 31A. These standards do not affect or address the general practice of mediation or alternative dispute resolution in the private sector outside the ambit of Rules 31 and 31A. The term “ADR Proceeding” as used in these standards refers only to Rule 31- and Rule 31A proceedings. As with other forms of judicial system activity, Rule 31 and 31A proceedings must be built on public understanding and confidence. Persons serving as Neutrals are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence. These ~~rules apply to all Neutrals who participate in court-annexed dispute resolution proceedings, regardless of whether they are listed under Rule 31, and~~ are a guide to ~~Neutral~~Neutrals conduct in discharging their professional responsibilities under Supreme Court ~~Rule~~Rules 31 and 31A.

(b) Neutral's Role. In dispute resolution proceedings, decision-making authority rests with the parties. The role of the Neutral includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements.

(c) General Principles. A dispute resolution proceeding under ~~Rule~~Rules 31 and 31A is based on principles of communication, negotiation, facilitation, and problem-solving that emphasize:

- (1) the needs and interests of the participants;
- (2) fairness;
- (3) procedural flexibility;
- (4) privacy and confidentiality;
- (5) full disclosure; and
- (6) self-determination.

Section 2. General Standards and Qualifications

(a) General. Integrity, impartiality, and professional competence are essential qualifications of any Neutral. A Neutral shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service.

(1) A Neutral shall not accept any engagement, perform any service, or undertake any act which would compromise the Neutral's integrity.

(2) A Neutral shall maintain professional competence in dispute resolution skills including but not limited to:

(A) staying informed of and abiding by all statutes, rules, and administrative orders relevant to the practice of Rule 31 [Mediations and 31A](#) ADR Proceedings [as applicable](#);

(B) continuing to meet the requirements of these rules; and

(C) regularly engaging in educational activities promoting professional growth.

(3) A Neutral shall decline appointment, withdraw, or request technical assistance when the Neutral decides that a case is beyond the Neutral's competence.

(b) Concurrent Standards. Nothing herein shall replace, eliminate, or render inapplicable relevant ethical standards not in conflict with these rules which may be imposed by the Code of Responsibility with respect to lawyers, or similar sets of standards imposed upon any Neutral by virtue of the Neutral's professional calling.

Section 3. Responsibilities to Courts

A Neutral shall be candid, accurate, and fully responsive to the Court concerning the Neutral's qualifications, availability, and all other pertinent matters. A Neutral shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. A Neutral is responsible to the judiciary for the propriety of the Neutral's activities and must observe judicial standards of fidelity and diligence. A Neutral shall refrain from any activity which has the appearance of improperly influencing the Court to secure appointment to a case, including gifts or other inducements to court personnel.

Section 4. The Dispute Resolution Process

(a) Orientation Session. On commencement of the ~~Rule 31~~ ADR

~~proceeding~~[Proceeding](#), a Neutral shall inform all parties that settlements and compromises are dependent upon the consent of the parties, that the Neutral is an impartial facilitator, and that the Neutral may not impose or force any settlement on the parties.

(b) Continuation of ~~a Rule 31~~[an ADR Proceeding](#). A Neutral shall not unnecessarily or inappropriately prolong a dispute resolution session if it becomes apparent that the case is unsuitable for dispute resolution or if one or more of the parties is unwilling or unable to participate in the dispute resolution process in a meaningful manner.

(c) Avoidance of Delays. A Neutral shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. A Neutral shall refrain from accepting appointments when it becomes apparent that completion of the dispute resolution assignments accepted cannot be done in a timely fashion. A Neutral shall perform the dispute resolution services in a timely and expeditious fashion, avoiding delays wherever possible.

Section 5. Self-Determination

(a) Parties' Right to Decide. A Neutral engaged in ~~mediation~~[an ADR Proceeding](#) shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties themselves.

(b) Prohibition of Neutral Coercion. A Neutral shall not coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to ~~a Rule 31~~[an ADR Proceeding](#).

(c) Prohibition of Misrepresentation. A Neutral shall not intentionally nor knowingly misrepresent material facts or circumstances in the course of conducting ~~a Rule 31~~[an ADR Proceeding](#).

(d) A Balanced Process. A Neutral shall promote a balanced process in ~~Mediation~~[an ADR Proceeding](#) and shall encourage the parties to conduct the ~~mediation~~[proceeding](#) in a nonadversarial manner.

(e) Mutual Respect. A Neutral shall promote mutual respect among the parties throughout the dispute resolution process.

Section 6. Impartiality

(a) Impartiality. A Neutral shall be impartial and advise all parties of any circumstances

bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party conducting ~~Rule 31~~ ADR ~~processes~~Proceedings.

(1) A Neutral shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.

(2) A Neutral shall withdraw from the ~~Rule 31~~ ADR Proceeding if the Neutral believes that he or she can no longer be impartial.

(3) A Neutral shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in and arising from any ~~Rule 31 process~~ADR Proceeding.

(b) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

(1) A Neutral must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the ~~Rule 31 proceeding~~ADR Proceeding. Disclosure must also be made of any pertinent pecuniary interest. Such disclosures shall be made as soon as practical after the Neutral becomes aware of the interest or the relationship.

(2) A Neutral must disclose to the parties or to the ~~court~~Court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in these standards, which might reasonably raise a question as to the ~~mediator's~~Neutral's impartiality. All such disclosures shall be made as soon as practical after the Neutral becomes aware of his or her candidacy as a ~~Rule 31~~ Neutral in a given proceeding or becomes aware of the interest or the relationship.

(3) The burden of disclosure rests on the Neutral. After appropriate disclosure, the Neutral may serve if all parties so desire. If the Neutral believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

(4) A Neutral shall not provide counseling or therapy to either party during the dispute resolution process, nor shall a Neutral who is a lawyer represent any party in any matter during the dispute resolution proceeding.

(5) A Neutral shall not use the dispute resolution process to solicit, encourage, or otherwise incur future professional services with either party.

(6) A Neutral shall refrain from the appearance of serving as a legal advocate for one or both parties to an ADR Proceeding. A Neutral shall explain to the parties to the ADR Proceeding that the Neutral is not the advocate for either party nor is the Neutral the advocate for both parties.

Section 7. Confidentiality

(a) Required. A Neutral shall preserve and maintain the confidentiality of all ~~dispute resolution proceedings~~ADR Proceedings except where required by law to disclose information.

(b) When Disclosure Permitted. A Neutral conducting ~~a Rule 31 Mediation~~an ADR Proceeding shall keep confidential from the other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure.

(c) Records. A Neutral shall maintain confidentiality in storing or disposing of records and shall render anonymous all identifying information when materials are used for research, training, or statistical compilations.

Section 8. Professional Advice

In addition to complying with ~~Rule 31~~, Section 10(b)(3) of Rules 31 and 31A:

(a) Generally. A Neutral shall not provide information the Neutral is not qualified by training or experience to provide.

(b) Independent Legal Advice. When a Neutral believes a party does not understand or appreciate how an ADR Proceeding or resulting agreement may adversely affect legal rights or obligations, the Neutral shall advise the participants to seek independent legal counsel.

(c) When Party Absent. If one of the parties is unable to participate in ~~a Rule 31 process~~an ADR Proceeding for psychological or physical reasons, a Neutral should postpone or cancel the proceeding until such time as all parties are able and willing to resume. Neutrals may refer the parties to appropriate resources if necessary (social service, lawyer referral, or other resources).

Section 9. Fees and Expenses

(a) General Requirements. A Neutral occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the Neutral must be governed by the same high standards of honor and integrity that apply to all other phases of the Neutral's work. A Neutral must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case. If fees are charged, a Neutral shall give a written explanation of the fees and related costs, including time and manner of payment, to the parties prior to the ~~Rule 31~~ADR proceeding. The explanation shall include:

(1) the basis for and amount of charges, if any, for:

(A) ~~Rule 31~~ADR sessions held in the ADR Proceeding;

(B) preparation for sessions;

(C) travel time;

(D) postponement or cancellation of ~~Rule 31~~ ADR sessions by the parties and the circumstances under which such charges will normally be assessed or waived;

(E) preparation of any written settlement agreement;

(F) all other items billed by the Neutral; and

(2) the parties' pro rata share of ~~Rule 31~~ADR fees and costs for the ADR Proceeding if previously determined by the ~~court~~Court or agreed to by the parties.

(b) Records. A Neutral shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties or to the ~~court~~Court upon request.

(c) Referrals. No commissions, rebates, or similar remuneration shall be given or received by a Neutral for referral of clients for ~~dispute resolution~~an ADR Proceeding or related services.

(d) Contingent Fees. A Neutral shall not charge a contingent fee or base a fee in any manner on the outcome of the process.

(e) Principles. A Neutral should be guided by the following general principles:

- (1) Time charges for a ~~Rule 31 ADR~~ session held in an ADR Proceeding should not be in excess of actual time spent or allocated for the session.
- (2) Time charges for preparation should be not in excess of actual time spent.
- (3) Charges for expenses should be for expenses normally incurred and reimbursable in dispute resolution cases and should not exceed actual expenses.
- (4) When time or expenses involve two or more sets of parties on the same day or trip, such time and expense charges should be prorated appropriately.
- (5) A Neutral may specify in advance a minimum charge for a ~~Rule 31 ADR~~ session to be held in an ADR Proceeding without violating this rule.
- (6) When a Neutral is contacted directly by the parties for dispute resolution services, the Neutral has a professional responsibility to respond to questions regarding fees by providing a copy of the basis for charges for fees and expenses.

Section 10. Concluding ~~a Dispute Resolution~~ an ADR Proceeding

(a) With Agreement.

- (1) The Neutral shall request that the terms of any settlement agreement reached be memorialized appropriately and shall discuss with the participants the process for formalization and implementation of the agreement. The Neutral may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct. R. 52 and any other forms approved by the Tennessee Supreme Court.
- (2) When the participants reach a partial settlement agreement, the Neutral shall discuss the procedures available to resolve the remaining issues.
- (3) The Neutral shall not knowingly assist the parties in reaching an agreement which for reasons such as fraud, duress, overreaching, the absence of bargaining ability, or unconscionability would not be enforceable.

(b) Without Agreement.

(1) *Termination by Participants.* The Neutral shall not require a participant's further presence at ~~a mediation~~ [an ADR Proceeding](#) when it is clear the participant desires to withdraw.

(2) *Termination by Neutral.* If the Neutral believes that the participants are unable to participate meaningfully in the process, the Neutral shall suspend or terminate the ~~Rule 31-ADR proceeding~~ [Proceeding](#). The Neutral should not prolong unproductive discussions that would result in emotional and monetary costs to the participants. The Neutral shall not continue to provide dispute resolution services [in an ADR Proceeding](#) where there is a complete absence of bargaining ability.

Section 11. Training and Education

(a) Training. A Neutral is obligated to acquire knowledge and training in the dispute resolution process, including an understanding of appropriate professional ethics, standards, and responsibilities.

(b) Continuing Education. It is important that Neutrals continue their professional education throughout the period of their active service. A Neutral shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.

(c) New Neutral Training. An experienced Neutral should cooperate in the training of new Neutrals, including serving as a mentor.

Section 12. Advertising

All advertising by a Neutral must represent honestly the services to be rendered. No claim of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. A Neutral shall make only accurate statements about the dispute resolution process, its costs and benefits, and the Neutral's qualifications.

Section 13. Relationships With Other Professionals

(a) The Responsibility of the Neutral Toward Other Neutrals.

(1) *Relationship With Other Neutrals.* A Neutral should not preside over an ADR Proceeding without first endeavoring to consult with the person or persons conducting any such dispute resolution proceeding occurring simultaneously in the same case.

(2) *Co-Mediation*[Neutrals](#). In those situations where there is more than one ~~mediator~~[Neutral](#) in a particular case, each ~~mediator~~[Neutral](#) has a responsibility to keep the others informed of developments essential to a cooperative effort. The wishes of the parties supersede the interests of the ~~mediator~~[Neutral](#).

(b) Relationship With Other Professionals.

(1) *Cooperation*. A Neutral should respect the relationship between dispute resolution and other professional disciplines including law, accounting, mental health, and the social services and should promote cooperation between Neutrals and other professionals.

(2) *Prohibited Agreements*. A Neutral shall not participate in offering or making a partnership or employment agreement that restricts the rights of a Neutral to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

Section 14. Advancement of Dispute Resolution

(a) Pro Bono Service. ~~Neutrals~~[Rule 31 Mediators](#) have a professional responsibility to provide competent services to persons seeking their assistance, including those unable to pay for such services. As a means of meeting the needs of the financially disadvantaged, a ~~Neutral~~[Rule 31 Mediator](#) should provide dispute resolution services pro bono or at a reduced rate of compensation whenever appropriate.

(b) Support of Dispute Resolution. A Neutral should support the advancement of dispute resolution by encouraging and participating in research, evaluation, or other forms of professional development and public education.

APPENDIX B. Form Agreed Order for Non-Binding Arbitration

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

)
)
Plaintiff,)
)
v.) NO.
)
)
)
Defendant.)

**AGREED ORDER FOR
NON-BINDING ARBITRATION**

~~By agreement of the parties, this case has been scheduled for Non-Binding Arbitration ("NBA") pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31.~~

~~The entry of this order does not affect the parties' rights to proceed to trial in accordance with applicable law. Unless otherwise ordered by the Court, discovery shall proceed as scheduled by the parties. Unless otherwise ordered by the Court, this order shall not preclude the parties from proceeding with discovery or from filing appropriate motions with the Court.~~

~~It is accordingly ORDERED~~

~~1. NBA Session~~

~~An NBA Session shall be conducted in this case within sixty (60) days of the date of this memorandum and order. The session will be conducted in accordance with the procedure, directions and conditions noted in this memorandum and order.~~

~~2. Appointment of Arbitrator~~

The Court hereby appoints [] as Arbitrator(s).

For purposes of determining whether the Arbitrator has or represents any conflicting interests, the standards set forth in _____ TCA _____ for disqualification of any justice, or judge will be applied. If the Arbitrator believes that he or she has or represents conflicting interests, that fact shall promptly be disclosed to all counsel and to the Clerk in writing. Any party who believes that the assigned Arbitrator has or represents conflicting interests shall provide written notice to the Clerk of same within ten (10) calendar days of learning of the potential conflict, or shall be deemed to have waived any opposition.

~~3. Written Pre-NBA Statements~~

~~(a) Form of Pre-NBA Statements~~

No later than ten (10) calendar days prior to the NBA Session, each party shall submit directly to the Arbitrator, and shall serve on all other parties, a written Statement. Such Statement shall be double spaced and shall not exceed fifteen (15) pages (not counting exhibits and attachments).

~~(b) Required Contents of Pre-NBA Statements~~

While the Statements may and should include any information that would be useful, they must: (1) identify the person(s), in addition to counsel, who will attend the NBA Session as the representative of the party with full decision-making authority; (2) describe briefly the substance of the suit and; (3) delineate the primary disputed factual issues and legal issues; (4) identify witnesses to be called at the NBA hearing and; (5) identify exhibits to be presented at the hearing.

~~(c) Identification of Other Persons Whose Presence is Thought to be Desirable~~

The parties may identify in these Pre-NBA Statements persons connected to a party opponent (including a representative of the party opponent's insurance carrier) whose presence at the NBA Session would improve substantially the prospects for making the NBA Session productive; the fact that a person has been so identified, however, shall not, by itself, result in an instruction compelling that person to attend the NBA Session. Persons other than the parties, their representatives, their counsel, representatives of their insurance carriers, and the Arbitrator may attend the Session only with the consent of the Arbitrator.

The Arbitrator will have the ability to request the presence of non-parties but does not

~~have the authority to compel their attendance.~~

~~(d) Attachments to Pre-NBA Statements~~

~~The parties shall attach to their written Pre-NBA Statements copies of documents out of which the suit arose, e.g., contracts, or the availability of which would materially advance the purposes of the Session, e.g., medical reports or documents by which special damages might be determined.~~

~~(e) Filing of Pre-NBA Statements Prohibited~~

~~The written Pre-NBA Statements shall not be filed with or provided to the Court or clerk, and the judge assigned to this case shall not have access to them. Instead, the Pre-NBA Statements shall be sent directly to the Arbitrator with copies to adversary counsel.~~

~~4. Attendance at the NBA Session~~

~~(a) Parties to Attend~~

~~The parties themselves shall attend the NBA Session unless excuse is provided in this section. This requirement reflects the Court's view that one of the principal purposes of the NBA Session is to afford litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of every party's case. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the NBA Session by a person (other than outside counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to terms of a settlement. A party that is a governmental or unit need not have present at the NBA Session the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a county or major agency), but must send to the session a representative, in addition to trial counsel, who is knowledgeable about the facts of the case and the party's position and is the person who has the authority and responsibility to make recommendations to the ultimate decision-making body. . In cases involving insurance carriers, representatives of the insurance companies, with authority, shall attend the NBA Session.~~

~~(b) Attorneys to Attend~~

~~Each party shall be accompanied at the NBA Session by the lawyer expected to be primarily responsible for handling the trial of the matter.~~

~~(c) Excuses for Non-Attendance~~

~~A party or lawyer will be excused from attending the NBA Session only after a showing that attendance would impose an extraordinary or otherwise unjustifiable hardship. A party or lawyer seeking to be excused must petition the Arbitrator in writing, no fewer than 15 calendar days before the date set for the NBA Session. Any such petition shall be in the form of a letter to the Arbitrator, a copy of which shall be sent to all parties, and which shall set forth all considerations that support the Request and shall state realistically the amount in controversy in the case. The Arbitrator shall rule on obligations for excuse for non-attendance. A party or lawyer who is excused from appearing in person at the NBA Session shall be available to participate by telephone.~~

~~5. Procedure at the NBA Session~~

~~The Arbitrator shall schedule the actual date, time and place of the hearing after consultation with the clerk and the parties, _____ days before the hearing. The hearing will be held generally in a lawyer's conference room or courtroom within the courthouse at which the action is pending, except that the Arbitrator may designate another location upon agreement of the parties.~~

~~Arbitration hearings are intended to be brief, evidentiary outlines of the case and not formal trials. Each side will be limited to an opening statement not to exceed ten minutes, unless there is a conflict of interest between the parties of such sides, in which event each party with a conflict of interest may make a separate opening statement of _____ minutes. Closing argument shall be _____ minutes per side, unless there is a conflict of interest between the parties of such sides, in which event such party with a conflict of interest may make a separate argument of _____ minutes. Rebuttal is allowed as a part of plaintiffs' allotted time. In the event that a party fails to appear, argument will be heard and evidence received from those parties appearing.~~

~~The Arbitrator shall have considerable discretion in structuring and conducting the NBA Session, and the NBA Session shall proceed informally. Rules of Evidence shall not apply, and there shall be no formal examination or cross-examination of witnesses.~~

~~6. Discovery~~

~~Discovery shall proceed as in any other civil action. The court will require that discovery be completed in a diligent and expeditious fashion. Except in exceptional circumstances, no additional discovery will be permitted when a trial de novo has been demanded after an Arbitration award.~~

~~7. Ex Parte Communication~~

~~There shall be no ex parte communication between an Arbitrator and any counsel or party on any matter relating to the action except for purposes of scheduling or continuing the hearing.~~

~~8. Record~~

~~No official record of the Arbitration hearing will be made. Any party desiring the attendance of a reporter shall make the necessary arrangements with a reporting agency. The costs of the reporter's attendance fee, record, and all transcripts thereof, shall be prorated equally among all parties ordering copies, unless they shall otherwise agree, and shall be paid for by the responsible parties directly to the reporting agency.~~

~~9. Testimony~~

~~All witnesses shall testify under oath or affirmation administered by the Arbitrator or any other duly qualified person. Fed.R.Civ.P. 45 shall apply to subpoenas for attendance of witnesses under these rules.~~

~~10. Attendance of Parties~~

~~Individual parties or authorized representatives of corporate parties shall attend the Arbitration hearing unless excused in advance by the Arbitrators for good cause shown.~~

~~11. Failure of Parties to Attend~~

~~The Arbitration hearing may proceed in the absence of a party who, after due notice, fails to be present; but an award of damages shall not be based solely upon the absence of a party.~~

~~12. Failure to Proceed~~

~~If a party fails to participate in the Arbitration process in a meaningful manner, the Arbitrator may impose appropriate sanctions against the party or his attorney.~~

~~13. Authority of Arbitrators~~

~~The Arbitrator or Arbitration Panel shall swear witnesses and receive evidence. At the Arbitration hearing, the Arbitrator or Chief Arbitrator shall rule on all objections, motions and admissions of evidence.~~

~~14. Arbitration Award~~

~~The Arbitrator shall issue and mail to the parties an award within 15 days of the date of the closing of the hearing or the receipt of posthearing briefs, whichever is later. The original copy of the award shall be mailed to the prevailing party.~~

~~15. Award Procedure~~

~~If the parties have stipulated in writing that the award shall be final and binding, the clerk shall enter the judgment on the award when filed. Otherwise, the award shall be a nullity.~~

~~16. Sealing the Award~~

~~The issuance of award must be confidential and remain so. Binding the parties to confidentiality must be done by means of completing a form prior to the Arbitration commencing.~~

~~17. Entry of Judgment on Award~~

~~Upon stipulation of the parties, the clerk shall, in accordance with Rule 58, Tennessee Rules of Civil Procedure, enter the award as the judgment of the court. The judgment so entered shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.~~

~~18. Limitation on Evidence~~

~~At the trial de novo, the court shall not admit evidence that there has been an Arbitration proceeding, the nature or amount of the award, nor any other matter concerning the conduct of the Arbitration proceeding, except that testimony given at an Arbitration hearing may be used for any purpose permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.~~

~~19. Costs~~

~~Unless permitted to proceed in forma pauperis, the party demanding the trial de novo, other than the United States or its agencies or officers, shall deposit with the clerk a sum equal to the Arbitrator fees and expenses (or the maximum fees payable to the Arbitrator if the Arbitrator has not yet submitted a voucher), which shall constitute~~

~~advance payment of such fees and expenses.~~

~~The clerk shall tax as costs against the party who demanded trial de novo the fees and expenses paid to the Arbitrator, unless:~~

~~(a) the party demanding the trial de novo obtains a final judgment, exclusive of interests and costs, more favorable than the Arbitration award, or~~

~~(b) the case is settled prior to trial, but only if the clerk is notified of settlement 10 days or more before the date set for trial, or~~

~~(c) the court determines that the demand for the trial de novo was made for good cause.~~

ENTER:

JUDGE

APPENDIX C. Form Order for Case Evaluation

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

)
)
Plaintiff,)
)
v.) NO.
)
)
)
Defendant.)

ORDER FOR CASE EVALUATION

~~This case has been scheduled for Early Neutral Evaluation ("ENE") pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31.~~

~~The Court, by entering this memorandum and order, is not depriving the parties of their right to proceed to trial in accordance with the applicable law. The pendency of ENE shall not interfere with the right and obligation of the parties to proceed with discovery and/or to make such motions to the Court as they may deem appropriate with respect to the preparation of their cases for trial.~~

It is accordingly ORDERED

1. Evaluation Session

~~An Evaluation Session shall be conducted in this case within 60 days of the date of this memorandum and order. The Evaluation Session shall be conducted in accordance with the procedure, directions and conditions noted in this memorandum and order.~~

2. Appointment of Evaluators

~~The Court hereby appoints [_____] , [_____] and [_____] as Evaluators. The Evaluators shall serve as a panel, with [_____] acting as Chair. The Evaluators shall be subject to the Standards of Conduct for Rule 31 neutrals, incorporated into Rule 31 as Appendix A.~~

~~For purposes of determining whether the Evaluators have or represent any conflicting interests, the standards set forth in [_____] TCA [_____] for disqualification of any justice, or judge have, and shall be, applied. If any of the Evaluators believe that they have or represent conflicting interests, they shall promptly disclose that circumstance to all counsel and to the Clerk in writing. Any party who believes that the assigned Evaluators have or represent conflicting interests shall provide written notice to the Clerk of same within 10 calendar days of learning of the potential conflict, or shall be deemed to have waived any opposition.~~

~~**3. Written Evaluation Statements**~~

~~**3.1 Form of Evaluation Statements**~~

~~No later than 10 calendar days prior to the Evaluation Session, each party shall submit directly to the Evaluators, and shall serve on all other parties, a written Evaluation Statement. Such Evaluation Statement shall be double-spaced and shall not exceed 15 pages (not counting exhibits and attachments).~~

~~**3.2 Required Contents of Evaluation Statements**~~

~~While the Evaluation Statements may, and should, include any information that would be useful, they must: (1) identify the person(s), in addition to counsel, who shall attend the Evaluation Session pursuant to 4.1 below as the representative of the party with full decision-making authority; (2) describe briefly the substance of the suit; (3) delineate the primary disputed factual and legal issues; (4) address whether there are factual and legal issues, the early resolution of which might appreciably reduce the scope of the dispute or contribute significantly to settlement negotiations; and (5) identify the discovery that promises to contribute most to equipping the parties for meaningful settlement discussions.~~

~~**3.3 Identification of Other Persons Whose Presence is Thought to be Desirable**~~

~~The parties may identify in these Evaluation Statements persons connected to a party opponent (including a representative of the party opponent's insurance carrier) whose presence at the Evaluation Session would improve substantially the prospects for making the Evaluation Session productive. The fact that a person has been so identified, however, shall not, by itself, result in an instruction compelling that person to attend the Evaluation Session.~~

~~**3.4 Attachments to Evaluation Statements**~~

~~The parties shall attach to their written Evaluation Statements copies of documents out of which the suit arose, e.g., contracts, or the availability of which would materially advance the purposes of the Evaluation Session, e.g., medical reports or documents by which special damages might be determined.~~

~~3.5 Filing of Evaluation Statements Prohibited~~

~~The written Evaluation Statements shall not be filed with or provided to the Court or clerk, and the judge assigned to this case shall not have access to them. Instead, the Evaluation Statements shall be sent directly to the Evaluators with copies to adversary counsel.~~

~~4. Attendance at the Evaluation Session~~

~~4.1 Parties to Attend~~

~~The parties themselves shall attend the Evaluation Session unless excused as provided in this section. This requirement reflects the Court's view that one of the principal purposes of the Evaluation Session is to afford litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of every party's case. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the Evaluation Session by a person (other than outside counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to terms of a settlement. A party that is a governmental unit need not have present at the Evaluation Session the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a county or major agency), but must send to the session a representative, in addition to trial counsel, who is knowledgeable about the facts of the case and the party's position and is the person who has the authority and responsibility to make recommendations to the ultimate decision-making body. In cases involving insurance carriers, representatives of the insurance companies, with authority, shall attend the Evaluation Session.~~

~~4.2 Attorneys to Attend~~

~~Each party shall be represented at the Evaluation Session by the lawyer expected to be primarily responsible for handling the trial of the matter.~~

~~4.3 Excuses for Non-Attendance~~

~~A party or lawyer shall be excused from attending the Evaluation Session only after showing that attendance would impose an extraordinary or otherwise unjustifiable hardship. A party or lawyer seeking to be excused must petition the Evaluators, in writing, no fewer than 15 calendar days before the date set for the Evaluation Session. Any such petition shall be in the form of a letter to the Chair of the panel of Evaluators, a copy of which shall be sent to all parties, and which shall set forth all considerations that support the Request and shall state realistically the amount in controversy in the case. The Chair of the panel of Evaluators shall rule on any such petition and may do so without consulting the other Evaluators. A party or lawyer who is excused from appearing in person at the Evaluation Session shall be available to participate by telephone.~~

~~4.4 Attendance of Non-Parties~~

~~The Evaluators may request the presence of non-parties but do not have the authority to compel their attendance.~~

~~4.5 Persons Entitled to Attend~~

~~Persons other than the parties, their representatives, their counsel, representatives of insurance carriers, and the Evaluators may attend the Evaluation Session only with the consent of the Chair.~~

~~5. Procedure at the Evaluation Session~~

~~The Evaluators shall have considerable discretion in structuring and conducting the Evaluation Session, and the Evaluation Session shall proceed informally. Rules of Evidence shall not apply, and there shall be no formal examination or cross-examination of witnesses.~~

~~In each case, however, the Evaluators shall, at least: (a) permit each party (through counsel or otherwise) to make an oral presentation of its position; (b) help the parties identify areas of agreement and, where feasible, reach stipulations; (c) assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning by the Evaluators that support these assessments; (d) if the parties are interested, help them, through private caucusing or otherwise, explore the possibility of settling the case; (e) estimate, to the extent feasible, the likelihood of liability and the dollar range of damages; (f) help the parties devise a plan for sharing the important information and/or conducting the key discovery that shall equip them as expeditiously as possible to enter meaningful settlement discussions or to posture the case for disposition by other means; and (g) determine whether some~~

~~form of follow-up to the Evaluation Session would contribute to the case development process or to settlement.~~

~~6. Follow-Up Session(s)~~

~~At the close of the Evaluation Session, the Evaluators may determine whether it would be appropriate to schedule some kind of follow-up to the Session. Such follow-up sessions could include, but need not be limited to, written or telephonic reports that the parties might make to one another or to the Evaluators, the exchange of specified kinds of information, and/or a second evaluation or settlement session. If appropriate, the Evaluators may direct that written follow-up reports be signed not only by counsel, but also by the parties themselves.~~

~~7. Confidentiality and Admissibility~~

~~The Court, and all counsel and parties, shall treat as confidential all written and oral communications made in connection with or during the ENE process including, but not limited to, the Evaluation Session. The Court hereby extends to all such communications all the protections afforded by Tennessee Rule of Evidence 408. In addition, no communication made in connection with or during any ENE may be disclosed to anyone not involved in the litigation, nor may any such communication be used for any purpose (including impeachment) in any pending or future proceeding in this Court. The privileged and confidential status afforded to communications made in connection with the ENE process is intended to include not only matters emanating from parties and counsel, but also the Evaluators' comments and assessments, as well as any recommendations made by the Evaluators about case development, discovery and/or motions. There shall be no communication about such matters between the Evaluators and the presiding judge. Nothing in this paragraph, however, shall be construed to prevent parties, counsel or the Evaluators from responding, in absolute confidentiality, to inquiries by any person duly authorized by this Court to analyze the utility of the ENE program, nor shall anything in this paragraph be construed to prohibit parties from entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with an ENE session.~~

~~8. Limits on Powers of Evaluators~~

~~Within limits imposed by this memorandum and order, and as it may be modified by further order, the Evaluators shall have authority to fix the time and place for, and to structure, Evaluation Sessions and follow-up events. The Evaluators shall have no power other than those described here, and in sections 5 and 6 of this memorandum and order. The Evaluators shall have no authority to compel parties to conduct or~~

~~respond to discovery or to file motions. The Evaluators shall have no authority to determine the issues in any case, to impose limits on parties' pretrial activities, or assess costs.~~

~~9. Fees of the Evaluators~~

~~The Evaluators shall be compensated at an hourly rate not to exceed [____] per hour. Unless by agreement otherwise, Evaluator fees shall be shared equally by the parties, and, if necessary, shall be taxed as costs.~~

~~10. Evaluators Not Witnesses~~

~~Evaluators shall be disqualified as counsel, witnesses, consultants or experts for any party as to this dispute and as arbitrators between the parties, and their oral and written opinions shall be inadmissible for all purposes in this or any other dispute involving the parties thereto.~~

ENTER:

JUDGE

APPENDIX D. Form Agreed Order for Minitrial

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

)
)
Plaintiff,)
)
v.) NO.
)
)
)
Defendant.)

~~AGREED ORDER FOR MINITRIAL~~

~~This action has been scheduled for Minitrial by agreement of the parties and pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31. The Court, by entering this order, is not depriving the parties of their right to proceed to trial in accordance with the applicable law. The pendency of Minitrial shall not interfere with the right and obligation of the parties to proceed with discovery and/or to make such motions to the Court as they may deem appropriate with respect to the preparation of their cases for trial.~~

~~It is accordingly ORDERED~~

~~1. Institution of Proceeding~~

~~The parties shall conduct a Minitrial on or before [_____] in accordance with this Order.~~

~~2. The Minitrial Panel~~

~~2.1 The Minitrial panel shall consist of one member of management from each party (the "Management Representative"), who shall have authority to negotiate a settlement on behalf of the party represented, and a Neutral Advisor (the "Neutral Advisor").~~

~~2.2 Each party shall name its Management Representative within [___] days from the date of this order by written notice to the other party and the Neutral Advisor. Each party~~

~~thereafter may designate a different Management Representative by written notice to the other party and the Neutral Advisor. Such representative shall not, however, be changed within [] days before the Information Exchange.~~

~~3. The Neutral Advisor~~

~~3.1 The Neutral Advisor, who shall be independent and impartial, shall perform the functions stated in this procedure and any additional functions on which the parties may hereafter agree. The Neutral Advisor shall be subject to the Standards of Conduct for Rule 31 neutrals, incorporated into Rule 31 as Appendix A.~~

~~3.2 The parties shall attempt to select a Neutral Advisor by mutual agreement.~~

~~3.3 If the parties have not agreed on a Neutral Advisor within 15 days from the date of this order, the Court shall appoint the Neutral Advisor from the list of Rule 31 mediators maintained by the ADRG.~~

~~3.4 Each party shall promptly disclose to the other party any circumstances known to it which would cause justifiable doubt regarding the independence or impartiality of an individual under consideration or appointed as Neutral Advisor. Any such individual shall promptly disclose any such circumstances to the parties. If any such circumstances have been disclosed, the individual shall not serve as Neutral Advisor unless all parties agree.~~

~~3.5 No party, nor anyone acting on its behalf, shall unilaterally communicate with the Neutral Advisor on any matter of substance, except as specifically provided for herein or agreed between the parties.~~

~~3.6 The Neutral Advisor shall identify, and the parties shall promptly send to the Neutral Advisor, such materials requested for the purpose of familiarizing the Neutral Advisor with the facts and issues in the dispute. The parties shall comply promptly with any requests by the neutral Advisor for additional documents or information relevant to the dispute.~~

~~3.7 The parties may jointly seek the advice and assistance of the Neutral Advisor in interpreting this procedure and on procedural matters.~~

~~3.8 The Neutral Advisor's per diem or hourly charge shall be established at the time of appointment. Unless the parties otherwise agree, (a) the fees and expenses of the Neutral Advisor and any other expenses of the proceeding shall be borne equally by the parties, and (b) each party shall bear its own costs of the proceeding.~~

~~4. Briefs and Exhibits~~

~~Before the Information Exchange, the parties shall exchange and submit to the Neutral Advisor briefs, as well as all documents or other exhibits, upon which the parties intend to rely during the Information Exchange. The parties shall agree upon the length of such briefs and the date upon which such briefs, documents and other exhibits are to be exchanged.~~

~~5. Information Exchange~~

~~The "hearing" is expected to take the form of an Information Exchange.~~

~~**5.1** The Information Exchange shall be held before the Minitrial panel at a place and time stated in the initiating agreement or thereafter agreed to by the parties and the Neutral Advisor.~~

~~**5.2** Each party shall make a presentation of its best case, and each party shall be entitled to a rebuttal. The order and permissible length of presentations and rebuttals shall be determined by agreement between the parties or, failing such agreement, by the Neutral Advisor.~~

~~**5.3** The Neutral Advisor shall moderate the Information Exchange.~~

~~**5.4** The presentations and rebuttals of each party may be made in any form and by any individuals as desired by such party. Presentations by fact witnesses and expert witnesses shall be permitted.~~

~~**5.5** Presentations may not be interrupted except that during each party's presentation, and following such presentation, any member of the panel may ask clarifying questions of counsel or other persons appearing on that party's behalf. No member of the panel may limit the scope or substance of a party's presentation. No rules of evidence, including rules of relevance, shall apply at the Information Exchange.~~

~~**5.6** If the parties agree, each party and counsel may ask questions of opposing counsel and witnesses during scheduled, open question and answer exchanges and during that party's rebuttal time.~~

~~**5.7** The Information Exchange shall be not be recorded by any means.~~

~~**5.8** In addition to counsel, each Management Representative may have advisors in attendance at the Information Exchange, provided that the other party and the Neutral~~

Advisor shall have been notified of the identity of such advisors at least five days before commencement of the Information Exchange.

~~6. Negotiations Between Management Representatives~~

~~6.1~~ At the conclusion of the Information Exchange, the Management Representatives shall meet one or more times, as necessary, by themselves and shall make all reasonable efforts to agree on a resolution of the dispute. By agreement, other members of their teams may be invited to participate in the meetings.

~~6.2~~ At the request of either Management Representative, the Neutral Advisor shall meet with the Management Representatives jointly or separately at the Neutral Advisor's discretion and shall give an oral opinion as to the issues raised during the Information Exchange. The Management Representatives may then attempt to resolve the dispute once again. At the joint request of the Management Representatives, the Neutral Advisor may at any time mediate their negotiations.

~~6.3~~ The terms of any settlement are to be set out in a written agreement which is to be signed by the Management Representatives as soon as possible after conclusion of the negotiations and shall, once signed, be legally binding on the parties.

~~7. Confidentiality and Admissibility~~

~~7.1~~ The entire process is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the proceedings by any of the parties, their agents, employees, experts and attorneys, and by the Neutral Advisor are confidential. Such offers, promises, conduct and statements are privileged under any applicable mediation privilege, are subject to Tennessee Rule of Evidence 408, and are inadmissible and not discoverable for any purpose, including impeachment, in litigation between the parties to the Minitrial or other litigation. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or nondiscoverable as a result of its presentation or use at the Minitrial.

~~7.2~~ The Neutral Advisor shall be disqualified as counsel, witness, consultant or expert for any party and as an arbitrator between the parties as to this dispute, and his or her oral and written opinions shall be inadmissible for all purposes in this or any other dispute involving the parties hereto.

ENTER:

JUDGE

APPENDIX E. Form Agreed Order for Summary Jury Trial

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

)
)
Plaintiff,)
)
v.) NO.
)
)
)
Defendant.)

**AGREED ORDER FOR SUMMARY
JURY TRIAL**

This action has been scheduled for Summary Jury Trial by agreement of the parties and pursuant to Tennessee Rule of Civil Procedure 16 and Tennessee Supreme Court Rule 31 and by agreement of the parties. The Court, by entering this order, is not depriving the parties of their right to proceed to trial in accordance with the applicable law. The pendency of Summary Jury Trial shall not interfere with the right and obligation of the parties to proceed with discovery and/or to make such motions to the Court as they may deem appropriate with respect to the preparation of their cases for trial.

It is accordingly ORDERED

1. Summary Jury Trial

A Summary Jury Trial is set for [_____], at [_____] a.m. to be conducted before a 12-member advisory jury and Judge [_____], being a judge other than the judge who shall preside at trial, should trial be necessary.

2. Challenges

Plaintiff(s) shall be entitled to exercise three challenges, and defendant(s) collectively shall be entitled to exercise three challenges after a brief voir dire examination to be conducted by counsel. There shall be no alternate jurors.

3. Jury Instructions

Counsel shall submit proposed jury instructions along with briefs on any novel issues of law presented by the case on or before [_____].

4. Attendance

4.1 Parties to Attend

~~The parties themselves shall attend the Summary Jury Trial unless excused as provided in this section. This requirement reflects the Court's view that one of the principal purposes of the Summary Jury Trial is to afford litigants an opportunity to articulate their positions and to hear, first-hand, both their opponent's version of the matters in dispute and a neutral assessment of the relative strengths of every party's case. A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if it is represented at the Summary Jury Trial by a person (other than outside counsel) with authority to enter stipulations (of fact, law, or procedure) and to bind the party to terms of a settlement. A party that is a governmental unit need not have present at the Summary Jury Trial the persons who would be required to approve a settlement before it could become final (e.g., the members of a city council or the chief executive of a county or major agency) but must send to the session a representative, in addition to trial counsel, who is knowledgeable about the facts of the case and the party's position and is the person who has the authority and responsibility to make recommendations to the ultimate decision-making body. In cases involving insurance carriers, representatives of the insurance companies, with authority, shall attend the Summary Jury Trial.~~

4.2 Attorneys to Attend

~~Each party shall be represented at the Summary Jury Trial by the attorney expected to be primarily responsible for handling the trial of the matter.~~

4.3 Excuses for Non-Attendance

~~A party or lawyer shall be excused from attending the Summary Jury Trial only after a showing that attendance would impose an extraordinary or otherwise unjustifiable hardship. A party or lawyer seeking to be excused must petition the judge, in writing, no fewer than 15 calendar days before the date set for the Summary Jury Trial. Any such petition shall be in the form of a letter to the judge, a copy of which shall be sent to all parties, and which shall set forth all considerations that support the Request and shall state realistically the amount in controversy in the case. The Judge shall rule on such petitions. A party or lawyer who is excused from appearing in person at the Summary Jury Trial shall be available to participate by telephone.~~

~~4.4 Attendance of Non-Parties~~

~~With approval of the judge, subpoenas may be issued to compel the presence of non-parties.~~

~~5. Evidence~~

~~All evidence shall be presented through attorneys for the parties with the exception that video presentations by experts or others shall be permitted. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence and sworn statements of potential witnesses. However, no witness's testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the witness, or upon representation of counsel that the witness would be called at trial, and that counsel has been told the substance of the witness's proposed testimony by the witness.~~

~~6. Bifurcation~~

~~**6.1** This Summary Jury Trial shall be bifurcated into a liability phase and a damages phase. Plaintiff(s) shall (collectively) be allotted [_____] to make a presentation to the jury regarding the facts of the case regarding liability. Defendants shall (each) be allotted [_____] for their presentation of the facts of the case regarding liability. Plaintiffs and defendants (collectively) shall each be allotted [_____] to make a final presentation, which shall include any rebuttal on the question of liability. Plaintiffs may divide their presentation so as to speak last.~~

~~**6.2** Regardless of whether the jury returns a verdict of liability, the Summary Jury Trial shall contain a damage phase. Plaintiff(s) shall be allotted [_____] for a presentation on damages. Defendants shall be allotted [_____] for a presentation on damages. Plaintiffs may divide their presentation so as to speak last.~~

~~7. Exhibits~~

~~Before the Summary Jury Trial, counsel shall confer with regard to physical exhibits, including documents and reports. The parties shall make a list from all available exhibits they intend to use at the Summary Jury Trial for inspection by opposing counsel on or before [_____]. Additionally, the parties shall jointly prepare and submit to the Court and courtroom deputy at the outset of the trial a list of the exhibits which have been marked, tagged and numbered by the parties. The parties, prior to the Summary Jury Trial date, shall endeavor to stipulate the admissibility of the exhibits. If the parties~~

~~cannot stipulate the admissibility of any exhibit, the Court shall rule, if practical, on its admissibility prior to the commencement of the Summary Jury Trial.~~

~~8. Objections~~

~~Objections shall be received if, in the course of a presentation, counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon. After presentations by counsel, the jury shall be given an abbreviated charge on the applicable law.~~

~~9. Form of Verdict~~

~~The jury may return either a consensus verdict or a special verdict consisting of an anonymous statement of each juror's findings on the issues submitted. The jury shall be encouraged to reach a consensus verdict. Counsel are encouraged to agree upon a verdict form. If agreement cannot be reached, each party desiring to submit a proposed verdict form must do so by [_____], and the judge shall then prepare a verdict form.~~

~~10. Record~~

~~Unless specifically authorized by the Court, the proceedings shall not be recorded.~~

~~11. Stipulation for Binding Determination~~

~~Counsel may stipulate that a consensus verdict by the jury shall be deemed a final determination on the merits and that judgment be entered thereon by the Court, or may stipulate to any other use of the verdict that shall aid in the resolution of the case. Any such stipulations may be made at any time before, during or after the proceedings.~~

~~12. Confidential Admissibility of Statements~~

~~The Court and all counsel and parties shall treat as confidential all written and oral communications made in connection with or during the Summary Jury Trial process. The Court hereby extends to all such communications all the protections afforded by Tennessee Rule of Evidence 408. No communication made in connection with any summary judgment should be used for any purpose (including impeachment) in any pending or future proceeding in this Court, nor shall anything in this paragraph be construed to prohibit parties from entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with a Summary Jury Trial session.~~

~~13. No Judicial Admission~~

~~No statements of counsel or of any party during the course of the Summary Jury Trial shall be construed as a judicial admission.~~

~~14. Discussion With Jurors~~

~~Counsel shall have an opportunity to question jurors in an informal manner following the termination of the Summary Jury Trial. However, no Summary Jury Trial juror may be called as a witness at a subsequent hearing or proceedings in this litigation as to any matter that is stated or emerges during the Summary Jury Trial, nor may any statement made by any such juror(s) be admitted in any subsequent hearing or proceeding in this litigation.~~

~~15. Costs~~

~~Unless counsel [_____] otherwise, the costs shall be assessed by the Court.~~

~~ENTER~~

~~JUDGE~~

~~[Adopted September 4, 2001; amended by order filed January 2, 2007; by order filed August 22, 2007; by order filed September 18, 2007; by order filed October 10, 2007; by order filed April 24, 2009; by order filed March 10, 2011, effective April 11, 2011; by order filed October 19, 2011; by order filed January 4, 2012, effective July 1, 2012; by order filed February 12, 2013; and by order filed November 22, 2013; and by order filed December 16, 2014 effective January 1, 2015; and by order filed February 12, 2015 effective July 1, 2015.]~~