

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT TO SUPREME COURT RULE 31,
 REGARDING ALTERNATIVE DISPUTE RESOLUTION**

**Filed
September 4, 2001**

ORDER

Supreme Court Rule 31 is hereby amended by deleting it in its entirety and by substituting instead the following:

Rule 31. Alternative Dispute Resolution.

GENERAL PROVISIONS

Section 1. Application

The standards and procedures adopted under this rule apply only to Rule 31 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 31. Pursuant to the provisions of this Rule, a court may order the parties to an eligible civil action to participate in certain alternative dispute resolution proceedings.

Section 2. Definitions

- (a) “Alternative Dispute Resolution Commission” or “ADRC” is the Supreme Court Alternative Dispute Commission established pursuant to this Rule.

- (b) “Case Evaluation” 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.

- (c) “Court” includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit, Chancery, Law & Equity and Probate Courts and, when exercising the jurisdiction of courts of record, General Sessions Courts and Juvenile Courts.
- (d) “Eligible Civil Action” includes all civil actions except forfeitures of seized property, civil commitments, adoption proceedings, and habeas corpus and extraordinary writs. The term “extraordinary writs” does not encompass claims or applications for injunctive relief.
- (e) “Judicial Settlement Conference” is a mediation conducted by a judicial officer other than the judge before whom the case will be tried.
- (f) “Mediation” is an informal process in which a neutral person conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.
- (g) “Mini-Trial” 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” 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 an order of a court entered in an eligible civil action in accordance with Section 3 (Initiation) directing the parties to participate in a Rule 31 ADR Proceeding.
- (j) “Rule 31 ADR Proceedings” are proceedings which take place in accordance with an Order of Reference and include “Case Evaluations,” “Mediations,” “Judicial Settlement Conferences,” “Non-Binding Arbitrations,” “Summary Jury Trials” and other proceedings as contemplated by an Order of Reference entered in accordance with this Rule.
- (k) A “Rule 31 Mediator” is any person listed by the ADRC as a mediator.
- (l) A “Rule 31 Neutral” is any person who acts as a Neutral in a Mediation, Case Evaluation, Mini-Trial or Non-Binding Arbitration.
- (m) A “Summary Jury Trial” 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 PROCEEDINGS

Section 3. Initiation/Order of Reference

- (a) Rule 31 ADR Proceedings will be initiated by the entry of an Order of Reference.
- (b) Upon motion of either party, or upon its own motion, a Court, by Order of Reference, may order the parties to an Eligible Civil Action to participate in a Judicial Settlement Conference, Mediation, or Case Evaluation. Alternatively, a court may make a standing Order of Reference by which all cases of a particular type or description are referred to Judicial Settlement Conference, Mediation, or Case Evaluation.
- (c) Any Order of Reference made sua sponte and any referral to Judicial Settlement Conference, Mediation or Case Evaluation made by standing order, 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 ADR or is not likely to benefit from submission to ADR. Pending disposition of any such motion, the ADR proceeding shall be stayed without the need for a court order.
- (d) Upon motion of a party, or upon its own motion, 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 concluded as efficiently and expeditiously as possible given the circumstances of the case.

Section 4. Selection of Neutrals

- (a) Within 15 days of the date of an Order of Reference, or the effective date of a standing Order of Reference, directing participation in a Rule 31 ADR Proceeding, other than a judicial settlement conference, the parties must notify the Court of the Rule 31 Neutral or Rule 31 Neutrals agreed to by the parties or of their inability to agree on a Rule 31 Neutral or Rule 31 Neutrals.
- (b) In the event the parties cannot agree on the selection of a neutral or neutrals, the Court shall nominate a neutral or neutrals in accordance with the following procedure:
 - (1) In the case of Rule 31 Mediations and Rule 31 Mini-trials and Non-Binding Arbitrations and Evaluations in which a single Rule 31 Neutral will serve, the Court shall designate three Rule 31 Neutrals 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.

- (2) In the case of an Evaluation or Non-Binding Arbitration, before a panel of three or more Rule 31 Neutrals, the Court shall designate, at random, three Rule 31 Neutrals, meeting the qualifications noted in Sections 22 or 23, for each spot on the panel and one additional Rule 31 Neutral for each spot on the panel for each additional party over two.
 - (3) After receiving the Court's nomination, each party shall strike one name for each Neutral being selected from the Court's nominations. Then, the Court shall appoint the remaining Rule 31 Neutral or Neutrals unless a valid and timely objection is made and upheld. In the event the designated Rule 31 Neutral cannot serve, the process, to the extent necessary will be repeated.
 - (4) The Court's nomination of Rule 31 Neutrals shall be random unless the matter requires particular expertise not possessed by all Rule 31 Neutrals.
- (c) The clerks for each judicial district shall maintain and make available to the public, upon request, a list of Rule 31 Mediators listed by the ADRC, the date of their approval, and their qualifications and experience.

Section 5. Reports

- (a) The Order of Reference shall require the Rule 31 Neutral or Rule 31 Neutrals to file a final report at the conclusion of the Rule 31 ADR Proceeding. The final report shall indicate (i) whether both parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule Neutral or Rule 31 Neutrals request that the costs of the neutral services be charged as court costs. The report shall be filed within the time specified by the Court in the Order of Reference. In the event the Order of Reference does not specify a deadline, the final report shall be filed within 60 days of the initial meeting with the parties pursuant to the Rule 31 ADR Proceeding.
- (b) Unless otherwise directed by the Order of Reference the Rule 31 Neutral shall file status reports with the court every 30 days until the Rule 31 ADR Proceeding is concluded.

Section 6. Participation of Attorneys

Attorneys may appear with clients during alternative dispute resolution proceedings.

Section 7. Inadmissible Evidence

Evidence of conduct or statements made in the course of Rule 31 ADR Proceedings and other proceedings conducted pursuant to an Order of Reference shall be inadmissible to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408.

Section 8. Costs

The costs of any Rule 31 ADR Proceeding, including the costs of the services of a Rule 31 Neutral or Rule 31 Neutrals, may, at the Rule 31 Neutral's or Neutrals' request, be charged as court costs. The Court may, in its sound discretion, waive or reduce costs of a Rule 31 ADR Proceeding.

GENERAL PROVISIONS APPLICABLE TO ALL NEUTRALS

Section 9. Standards of Professional Conduct for Rule 31 Neutrals

- (a) Rule 31 Neutrals shall avoid the appearance of impropriety.
- (b) Rule 31 Neutrals shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in Rule 31 ADR Proceedings, including but not limited to the Standards of Professional Conduct for Rule 31 Neutrals attached as Appendix A hereto. A violation of any of these rules and procedures by any attorney Rule 31 Dispute Resolution Neutral shall constitute a violation of the Code of Professional Responsibility.
- (c) The Standards of Professional Conduct attached as Appendix A for Rule 31 Neutrals are incorporated into this Rule.

Section 10. Obligations of Rule 31 Neutrals

- (a) Before the commencement of any Rule 31 ADR Proceeding, Rule 31 Neutrals shall:
 - (1) Make a full and written disclosure of any known relationships with the parties or their counsel or the proceedings that may affect or give an appearance of affecting the Neutral's neutrality.
 - (2) Advise the parties regarding the Rule 31 Neutral's qualifications and experience.
 - (3) Discuss with the parties, the rules and procedures which will be followed in the proceeding.
- (b) During Rule 31 ADR Proceedings, Rule 31 Neutrals shall:
 - (1) Advise the court entering the Order of Reference if the 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 to the parties to the Rule 31 ADR Proceeding in which the Neutral is participating. However, while a Rule 31 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 31 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, neither an “evaluation” pursuant to a Case Evaluation nor an “award” pursuant to a Non-binding Arbitration, nor an “advisory verdict” pursuant to a Summary Jury Trial will be considered to be “legal advice” for purposes of this Rule.
- (c) During and following Rule 31 ADR Proceedings, Rule 31 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 31 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 Neutral's relationship with any member of the judiciary or the judiciary's staff with regard to the Rule 31 ADR Proceedings or the results of Rule 31 ADR Proceedings.
- (d) Preserve and maintain the confidentiality of all information obtained during Rule 31 ADR Proceedings and shall not divulge information obtained by them during the course of Rule 31 ADR Proceedings without the consent of the parties, except as otherwise may be required by law.

Section 11. Proceedings for Discipline of Rule 31 Neutrals

- (a) Any grievances against a Rule 31 Neutral who is not an attorney regarding the failure of the Rule 31 Neutral to comply with the Provisions of this Rule or any standard promulgated under this Rule shall be filed with the ADRC.
- (b) Grievances against Rule 31 Neutrals who are attorneys regarding the failure of the Rule 31 Neutral to comply with the provisions of Rule 31 or any standard promulgated under Rule 31 shall be filed with the Board of Professional Responsibility and determined in accordance with procedures adopted by that board.
- (c) Any grievance against a non-attorney Rule 31 Neutral will be heard in the first instance by a Grievance Committee of three Commissioners, appointed by the Chair and, where possible, from the Grand Division in which the alleged act or failure to act giving rise to the grievance took place.

- (d) The Grievance Committee will hear and determine the grievance and provide a written ruling stating whether there is cause for the grievance. If the Grievance Committee finds that there is cause for the grievance, it shall impose an appropriate sanction upon the Rule 31 Neutral, including private admonishment, public reprimand, suspension, or disqualification.
- (e) A party who wishes to obtain a review of the decision of the Grievance Committee may appeal to the full Commission by filing a written notice of appeal with the ADRC, through the AOC Programs Manager, within 30 days following the Grievance Committee's decision.
- (f) The Commission will then hear the grievance *de novo* sitting without those members who served on the original Grievance Committee.
- (g) The Commission will hear and determine the grievance and provide a written ruling stating whether there is cause for the grievance. If the Commission finds that there is cause for the grievance, it shall impose an appropriate sanction upon the Rule 31 Neutral, including private admonishment, public reprimand, suspension, or disqualification.

Section 12. Immunity

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

Section 13. Compensation

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

PROVISIONS REQUIRED 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 admitted to practice in Tennessee 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 admitted to

practice in Tennessee for at least ten years, during which time a substantial portion of the lawyer's practice shall be 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 in Tennessee 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 admitted to practice in Tennessee 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, admitted to practice in Tennessee for at least ten years during which a substantial portion of the lawyer's practice shall be in family cases.

Section 16. Rule 31 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 admitted to practice in Tennessee 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 admitted to practice in Tennessee for at least ten years, during which a substantial portion of the lawyer's practice shall be in family cases.

Section 17. Rule 31 Mediators

No person shall act as a Rule 31 Mediator without first being listed by the ADRC. To be listed and remain listed, Rule 31 Mediators must pay application fees and annual renewal fees set by the ADRC and must comply with the qualifications and training requirements set forth in this section.

- (a) Rule 31 Mediators in General Civil Cases

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

- (1) be of good moral character and certify in writing an intention to comply with the conditions and obligations imposed by Rule 31, including those requirements related to mentorship and pro bono obligations;
- (2) have a graduate degree plus four years of practical work experience, or a baccalaureate degree plus six years of practical work experience; and

- (3) complete 40 hours of general mediation training which includes the curriculum components specified by the Commission for Rule 31 mediators in general civil cases.

(b) Rule 31 Mediators in Family Cases

To be listed as a Rule 31 mediator in family cases, one must:

- (1) be of good moral character and certify in writing an intention to comply with all the conditions and obligations imposed by Rule 31, including those requirements related to mentorship and pro bono obligations;
- (2) be a Certified Public Accountant or have a graduate degree;
- (3) have four years of practical work experience in psychiatry, psychology, counseling, social work, education, law, or accounting;
- (4) complete 40 hours of training in family mediation which includes the curriculum components specified by the Commission 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
- (5) complete six additional hours of training in Tennessee family law and court procedure.

(c) Content of Training Programs for Rule 31 Mediators

- (1) Before being listed either as General Civil Mediators or as Family Mediators, applicants shall complete a course of training consisting of not less than 40 hours, including the following subjects:
 - (A) Rule 31 and procedures and standards adopted thereunder
 - (B) Conflict resolution concepts
 - (C) Negotiation dynamics
 - (D) Court process
 - (E) Mediation process and techniques
 - (F) Communication skills
 - (G) Standards of conduct and ethics for Rule 31 Neutrals

- (H) Community resources and referral process
 - (I) Cultural and personal background factors
 - (J) Attorneys and mediation
 - (K) The unrepresented party and mediation
- (2) The 40 hours of instruction for Rule 31 General Civil Case Mediators will also include:
- (A) State rules, state statutes, and local procedures and forms affecting civil mediation
 - (B) Appropriate techniques for mediating with multiple parties
 - (C) Appropriate techniques for handling situations where individual(s) present do not have authority to settle
 - (D) Observation and role playing of trainees in general civil mediations
- (3) The 40 hours of instruction for Rule 31 Family Mediators will also include:
- (A) State rules, state statutes and local procedures and forms governing family mediation
 - (B) Special ethical dilemmas arising in the family mediation context
 - (C) The constraints attending the mediation of cases where a threat of domestic violence exists
 - (D) Confidentiality as it relates to child abuse and spouse abuse
 - (E) The use of protective services, as in cases of child abuse, domestic violence, or elder abuse, and maintaining a list of these services
 - (F) Psychological issues in separation, divorce and family dynamics
 - (G) Issues concerning the needs of children in the context of divorce
 - (H) Family economics
 - (I) Observation and role playing of trainees in family mediations

(J) In addition to the 40-hour program of instruction, Rule 31 family mediators will receive six hours of training in Tennessee family law and procedure. It is provided, however, that the ADRC may waive this requirement for lawyers who have completed at least six hours of training devoted to Tennessee family law and/or procedure approved by the Commission on Continuing Legal Education within the three-year period immediately prior to the completion of the requirements of Section 17(c)(1) through (9).

(d) Waiver of Training Requirements for Certain Mediator Neutrals

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 17(a) or (b): (i) Graduates of accredited law schools who have passed a law school 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 years of practical work experience; (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 ten years prior to the application.

(e) Procedure for Cross-Listing Rule 31 Mediators

The ADRC may cross-list an individual listed as a family mediator or listed as a general civil mediator, if that individual has met the requirements of Section 17(a) or (b), 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 also listed as a general civil or family mediator.

Section 18. Additional Obligations of Rule 31 Mediators

Rule 31 Mediators, to remain listed by the ADRC, shall comply with continuing education and annual registration requirements, as follows:

(a) Continuing Education

- (1) Rule 31 mediators in general civil cases must complete six hours of training every two years, with at least one of those hours devoted to ethics; and
- (2) Rule 31 family mediators must complete six hours of training every two years, including:
 - (A) at least one hour devoted to ethics, and
 - (B) three hours of training in family law.

(b) Annual Renewal of Rule 31 Mediator Status

As a condition of continued listing, each Rule 31 Mediator must file an annual report with the AOC Programs Manager attesting to his or her continued qualification under Rule 31 and attesting to continued compliance with the various orders, standards, and requirements promulgated under Rule 31 and must pay an annual registration fee to be set by the Commission.

(c) Inactive Status

Any Rule 31 Mediator who is prohibited by reason of employment from practicing mediation during such employment may apply to the Commission for inactive status. If approved by the Commission, such Mediator shall be placed on inactive status during such employment.

While on inactive status, the Mediator will not have to pay the annual fee, but must comply with the continuing education requirements.

The Mediator must apply to the Commission to be reinstated to active status.

(d) Pro Bono Service

As a condition of continued listing each Rule 31 Mediator must be available to conduct three pro bono mediations per year, not to exceed 20 total hours. At such time as an Order of Reference to Mediation is made or, in the case of a standing Order of Reference, becomes effective, the court making the order 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.

PROVISIONS FOR ADMINISTRATION OF THE RULE

Section 19. Alternative Dispute Resolution Commission

- (a) The ADRC shall be appointed by the Supreme Court which shall name one of the ADRC's members as the Chair. The Commission 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;
 - (4) Reviewing and revising, as and when appropriate, the standards of professional conduct that shall be required of Rule 31 Neutrals;
 - (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 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;
 - (10) Suggesting rules and revisions in rules regarding alternative dispute resolution proceedings; and
 - (11) Setting and collecting appropriate training and registration fees.
- (b) 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 lists of Rule 31 mediators in accordance with procedures recommended by the Commission and approved by the Supreme Court;
- (2) Processing annual reports from Rule 31 Mediators and assuring their continued qualification for inclusion on lists of qualified Dispute Resolution Neutrals;
- (3) Taking such steps as may be necessary to provide lists of Rule 31 Dispute Resolution Neutrals to the appropriate clerks of court;
- (4) Coordinating, approving, or providing training to Rule 31 Dispute Resolution Neutrals;
- (5) Assisting applicants seeking to become Rule 31 Mediators in fulfilling observation requirements;
- (6) Processing grievances against Rule 31 non-attorney Mediators;
- (7) Coordinating the work of and assisting the Commission;
- (8) Assisting in the evaluation of Rule 31 alternative dispute resolution programs; and
- (9) Taking such other steps in conjunction with the Supreme Court and the Commission as may be reasonably necessary to establish, maintain and improve the court-annexed dispute resolution program in Tennessee.

PROVISIONS RELATIVE TO PARTICULAR RULE 31 ADR PROCEEDINGS OTHER THAN MEDIATION

Section 20. Judicial Settlement Conferences

Trial Court Judges are authorized to conduct judicial settlement conferences in accordance with procedures to be developed by Local Rule, by Standing Order or in consultation with the parties. Without the consent of the parties, no Judge presiding over a matter may preside over a Judicial Settlement Conference respecting that matter.

Section 21. Non-Binding Arbitration

Trial Court Judges are authorized to conduct Non-Binding Arbitration in accordance with procedures to be developed by Local Rule, by Standing Order or in consultation with the parties. Attached as Appendix B is a template form of order for consideration and possible use by parties and courts in fashioning their own order for non-binding arbitration. Neutrals serving in Non-Binding Arbitrations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 22. Case Evaluation

Trial Court Judges are authorized to direct the parties to participate in case evaluation in accordance with procedures to be developed by Local Rule, by Standing Order or in consultation with the parties. Attached as Appendix C is a template form of order for consideration and possible use by Trial Judges in fashioning orders directing participation in Case Evaluations. Neutrals serving in Case Evaluations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 23. Mini-trial

Mini-trial 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, design a procedure which is suited for the Eligible Civil Action. Attached as Appendix D is a template form of order for consideration and possible use by the parties in fashioning an order for a mini-trial. Neutrals serving in Mini-Trials will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

Section 24. 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, design a procedure which is suited for the Eligible Civil Action. Attached as Appendix E is a template form of order for consideration and use by the parties and trial judges in fashioning an order for Summary Jury Trial.

APPENDIX A

Standards of Professional Conduct for Rule 31 Neutrals

Section 1. Preamble

(a) Scope; Purpose

These rules are intended to instill and promote public confidence in the Alternative Dispute Resolution process under Tennessee Supreme Court Rule 31 and to be a guide to Neutrals serving under Rule 31. As with other forms of judicial system activity, Rule 31 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 conduct in discharging their professional responsibilities under Supreme Court Rule 31.

(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 31 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 ADR Proceedings;
 - (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, 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 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 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 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 ADR Proceeding.

(d) A Balanced Process

A Neutral shall promote a balanced process in Mediation and shall encourage the parties to conduct the mediation 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.

- (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.

(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. 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 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 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.

Section 7. Confidentiality

(a) Required

A Neutral shall preserve and maintain the confidentiality of all dispute resolution proceedings except where required by law to disclose information.

(b) When Disclosure Permitted

A Neutral conducting a Rule 31 Mediation 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):

(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 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 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;
 - (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 if previously determined by the 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 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 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 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 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 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.
- (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 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. 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 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. In those situations where there is more than one mediator in a particular case, each mediator 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.

(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 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 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.

FOR THE COURT:

Frank F. Drowota, III, Chief Justice