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June 8, 2007

The Honorable Michael Catalano  
Clerk, Tennessee Supreme Court  
Supreme Court Building, Room100  
401 Seventh Avenue North  
Nashville, TN 37219

IN RE: PROPOSED AMENDED RULE 31  
RULES OF THE TENNESSEE  
SUPREME COURT

Dear Mike:

Attached please find an original and six copies of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Larry D. Wilks, President  
Tennessee Bar Association  
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2007 JUN -08 PM 3:27  
NASHVILLE

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**  
JUN 08 2007  
Clerk of the Courts

IN RE: PROPOSED AMENDED RULE 31 )  
RULES OF THE TENNESSEE ) No. M2006-01303-SC-RL2  
SUPREME COURT )  
)  
)

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COMMENT OF THE TENNESSEE BAR ASSOCIATION

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**INTRODUCTION**

The Tennessee Bar Association (“TBA”), by and through its President, Larry D. Wilks; General Counsel, Gail Vaughn Ashworth; and Executive Director, Allan F. Ramsaur, files this comment in support of amendments to Rule 31 of the Rules of the Supreme Court.

**BACKGROUND**

On May 9, 2007, this Honorable Court published two orders soliciting written comments on proposed amendments to its Rule 31, Alternative Dispute Resolution.

The Tennessee Bar Association, on the advice of its Dispute Resolution Section, and through its Executive Committee, reviewed the proposed amendments and recommends to the Court that the proposed amendments be adopted.

1. CONFIDENTIALITY REQUIREMENTS SHOULD BE THE SUBJECT OF TRAINING FOR CIVIL MEDIATORS AND RULE 31 FAMILY MEDIATORS.

The rule filed on January 2, 2007 inadvertently omitted from the list of subjects covered in training for Rule 31 mediators the subject of confidentiality requirements and exceptions as required by law. Confidentiality requirements are an important part of the training of any Rule 31 mediator and should be mandated as part of the Court's Rule.

2. CONFUSION REGARDING TIMELINES BASED ON THE NUMBER OF "DAYS" CAN BE RESOLVED BY ADOPTION OF A DEFINITION OF "DAYS."

Apparently the lack of definition for the term "day" has caused confusion in the administration of the Alternative Dispute Resolution Commission Rules. A

definition of “day” is provided to address this confusion in that it means a calendar day. This definition sets forth a common understanding in the law of what a day is. Adoption of this definition should not cause any further confusion and could help address confusion which already exists.

### CONCLUSION

The TBA appreciates the continued opportunity to comment afforded by this Honorable Court. The proposed amendments are reasonable and necessary and should be adopted.

RESPECTFULLY SUBMITTED,

by: /s/ by permission \_\_\_\_\_

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid on June 8, 2007.


  
Allan F. Ramsaur

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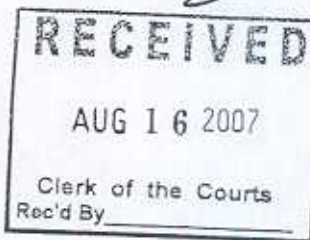
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The Honorable Michael Catalano  
Clerk, Tennessee Supreme Court  
Re: Proposed Amended Rule 31, Section 11  
Supreme Court Building, Room 100  
401 Seventh Avenue North  
Nashville, TN 37219

IN RE: PROPOSED AMENDED RULE 31,  
RULES OF THE TENNESSEE  
SUPREME COURT

Dear Mike:

Attached please find an original and six copies of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Marcia M. Eason, President, Tennessee Bar Association  
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IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

FILED

2007 AUG 16 PM 2:51

APPELLATE COURT CLERK  
NASHVILLE

IN RE: PROPOSED AMENDED )  
RULE 31, RULES OF THE ) No. M2007-01253-SC-RL2-RL  
TENNESSEE SUPREME )  
COURT )

---

COMMENT OF THE TENNESSEE BAR ASSOCIATION

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The Tennessee Bar Association ("TBA"), by and through its President, Marcia M. Eason; General Counsel, William L. Harbison; Chair, Standing Committee on Ethics and Professional Responsibility, Lucian T. Pera; and Executive Director, Allan F. Ramsaur, files this comment to the proposed amendment of Rule 31. The TBA urges that the Court establish as the threshold for referral of a grievance against a Rule 31 Neutral who is a lawyer to the Board of Professional Responsibility whether the violation of the Rule 31 raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer.

On January 2, 2007, this Honorable Court revised Rule 31 based on a proposal submitted by the Alternative Dispute Resolution Commission. On June 11 of this year, the Court published for comment additional proposed changes to Section 11 of Rule 31 relative to the discipline procedures for Rule 31 Mediators. The proposed changes add some definition to the process of the handling of grievances.

In its current structure, grievances as to breaches of conduct under the rule by non-lawyer Rule 31 Mediators are addressed by the Alternative Dispute Resolution Commission. However, any violation of the rule by a lawyer is referred to the Board of Professional Responsibility for lawyer discipline. The effect is that a Rule 31 Neutral lawyer who may commit some minor infraction of Rule 31 would be subject to professional discipline as a lawyer by the Board of Professional Responsibility ("BPR"). The lawyer's behavior might not reflect on his or her honesty, trustworthiness, or fitness as a lawyer, however the only sanction in the proposed rule relates to the privilege of practicing law. The TBA recommends use of the phrase honesty, trustworthiness, or fitness, drawn from RPC 8.3, as an appropriate standard for referral of matters to the "BPR." Attached as Exhibit A is a redlined version of Rule 31, Section 11 which would implement the change recommended by the TBA.

RESPECTFULLY SUBMITTED,

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#### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "B" by regular U.S. Mail, postage prepaid on August 16, 2007.

ALLAN F. RAMSAUR  
Allan F. Ramsaur



## Exhibit A

### Rule 31. Alternative Dispute Resolution.

The following amended section 11 of Rule 31 replaces the existing section 11 in its entirety:

#### Section 11. Proceedings for Discipline of Rule 31 Mediators.

(a) Any grievance against a Rule 31 Mediator ~~who is an attorney~~ regarding the failure of the Rule 31 Mediator to comply with the provisions of this Rule or any standard promulgated under this Rule shall be filed with the ADRC.

(b) Any grievance against a Rule 31 Mediator who is an attorney ~~regarding the failure of the Rule 31 Mediator to comply with the provisions of Rule 31 or any standard promulgated under Rule 31~~ that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall be filed with the Board of Professional Responsibility and determined in accordance with procedures adopted by that board. If such a grievance is filed with the ADRC, the ADRC shall promptly refer such complaint to the Board of Professional Responsibility for action.

(c) Any grievance against a ~~non-attorney~~ Rule 31 Mediator will be reviewed 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 shall determine whether the allegations contained in the complaint, if true, would constitute a violation of Rule 31. If the Grievance committee finds that the complaint would not constitute a violation of Rule 31, the committee shall dismiss the complaint without prejudice. If the Grievance Committee determines that the allegations, if true would constitute a violation of Rule 31, the Grievance Committee shall 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 Mediator, 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 ADRC 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 ADRC will then hear the grievance de novo sitting without those members who served on the original Grievance Committee.

(g) The ADRC will hear and determine the grievance and provide a written ruling stating whether there is cause for the grievance. If the ADRC finds that there is cause for the grievance, it shall impose an appropriate sanction upon the Rule 31 Mediator, including private admonishment, public reprimand, suspension, or disqualification. The decision of the ADRC is final.

M 2007-01253-5C-RL2-RL

June 25, 2007



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100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219-1407

Re: Proposed Amended Rule 31

Dear Mr. Catalano:

Pursuant to the Tennessee Supreme Court's Order soliciting comments on the Proposed Amended Rule 31, the Knoxville Bar Association submitted the Proposed Amended Rule to its Professionalism Committee for review. I have attached a copy of the Committee's recommendation which was adopted by the KBA Board of Governors at its meeting on June 20, 2007.

The Professionalism Committee also believes that it would be beneficial to all parties if the comment period for proposed rules could be more than 30 days. It is often difficult for all members of our voluntary bar to receive, consider, discuss, and make comments within such a short period of time. The Professionalism Committee recommends that comment periods for proposed amendments be greater than 30 days.

The Knoxville Bar Association respectfully submits the foregoing comments for the Court's further consideration. As always, we appreciate the opportunity to comment on proposed rules promulgated by the Tennessee Supreme Court.

With kind regards,

Sincerely yours,

Ruth T. Ellis, President  
Knoxville Bar Association

cc: KBA Executive Committee  
KBA Professionalism Committee

MEMORANDUM

To: Knoxville Bar Associate Board of Governors  
From: Timothy C. Houser, Co-Chair KBA Professionalism Committee 2007  
Re: Comments to Proposed Amended Rule 31, Rules of the Tennessee Supreme Court  
Date: June 18, 2007

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The Professionalism Committee met to discuss the proposed Amended Rule 31 of the Rules of the Tennessee Supreme Court. While the committee did not believe any substantive changes in the language was needed, the committee did believe that the organizational structure of the proposal could be made more clear.

The Rule discusses proceedings for the discipline of Rule 31 Mediators. The disciplinary procedures are different for mediators who are attorneys as opposed to mediators who are not attorneys. A grievance against an attorney mediator is handled through the Board of Professional Responsibility. On the other hand, a grievance against a non-attorney mediator is handled through the ADRC.

Sections (c), (d), (e), (f) and (g) of the proposed Amendment apply to non-attorney mediators. However, the proposed Rule, as written, makes it unclear as to whether the ADRC provisions apply to attorneys. The committee believes that the Rule would be more clear if the Rule was renumbered such that Section (a) would refer to attorney mediators while Section (b) would refer to non-attorney mediators. The grievance procedures for non-attorney mediators would then be set forth in sub-sections (1) - (5). The renumbered proposed Amendment is attached as Exhibit A. The committee recommends that the proposed Amendment simply be renumbered to more clearly define the disciplinary procedures for attorney and non-attorney mediators.

Respectfully submitted,

Timothy C. Houser, Co-Chair  
KBA Professionalism Committee 2007

cc: Honorable Thomas W. Phillips, Co-Chair KBA Professionalism Committee 2007  
Ruth T. Ellis, Esq., KBA President 2007  
Adrienne L. Anderson, Esq., KBA President Elect 2008  
Paula R. Voss, Esq., KBA Board of Governors Liaison 2007  
Marsha S. Wilson, Esq., KBA Executive Director