

FILED

July 28, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN THE SUPREME COURT OF TENNESSEE

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

CORRECTED ORDER AMENDING SECTIONS 7, 11, 12, 13 AND 17 OF RULE 31

On recommendation of the Alternative Dispute Resolution Commission, and for good cause shown, Rule 31 of the Tennessee Supreme Court Rules is AMENDED in the following particulars:

1. Elimination of Affidavit Under Section 7

Section 7 now requires the presentation of a uniform affidavit of indigency as a condition of a request for waiver or reduction of costs, and this requirement appears unnecessarily cumbersome. This requirement should be eliminated and the conditions upon which Courts may waive or reduce costs should be left to the discretion of the trial court. Section 7 is accordingly amended to read:

Section 7. Costs

The costs of any alternative dispute resolution proceeding, including the cost of the services of the Rule 31 dispute resolution neutral, at the neutral's request, may be charged as court costs. The court may in its sound discretion waive or reduce costs of an alternative dispute resolution proceeding.

2. Approval of Neutrals as Required by Sections 11 and 12

The Court intends to vest in the Commission on Alternative Dispute Resolution the responsibility for reviewing and, where appropriate, approving applications for listing as Rule 31 Neutrals. Accordingly, Section 11(a) is amended to read:

The Supreme Court shall appoint an Alternative Dispute Resolution Commission and shall name one of the members as the Chair. The Commission shall have the responsibility for:

* * *

(7) reviewing and where appropriate approving Rule 31 dispute resolution neutrals who have met eligibility requirements.

Section 12(b) is amended to delete certain language and read:

All Rule 31 dispute resolution neutrals must continually comply with the conditions, qualifications, and standards set for Rule 31 dispute resolution neutrals by the Tennessee Supreme Court and may be removed from participation upon non-compliance.

3. Deferral of Section 13 Observation Requirement

The Court is informed that the imposition of a requirement that Rule 31 mediators observe Rule 31 mediations as a condition to their being listed is problematical because there are insufficient Rule 31 mediations to enable trainees to satisfy this requirement. The Court is therefore persuaded that this requirement should be deferred until June 1, 1999.

Section 13(a) is therefore amended to read:

To be qualified as a Rule 31 mediator in general civil cases, one must:

* * *

(4) complete a documented observation of one complete mediation conducted by a Rule 31 mediator who has completed at least three mediations, provided, however, that this requirement shall not apply to persons who, prior to June 1, 1999, have completed the other requirements for listing as general civil case mediators.

And, Section 13(b) is amended to read:

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

* * *

(6) complete a documented observation of one complete family mediation conducted by a Rule 31 mediator who has completed at least three family mediations, provided, however, that this requirement shall not apply to persons who, prior to June 1, 1999, have completed the other requirements for listing as family case mediators.

4. Correction of Typographic Errors in and Removal of Family Law and Procedure Training Under Section 17 for Certain Lawyers

By reason of a typographical error, subsection designations were omitted from Section 17 setting forth training requirements. This omission needs to be corrected. In addition, the Court is persuaded that Section 17 should be amended to allow the Alternative Dispute Resolution Commission to waive the requirement that Rule 31 family mediators have six hours of training in Tennessee family law and procedure in the case of lawyers who have completed six hours of approved CLE training within three years immediately prior to their applications. Section 17 is accordingly amended to read as follows:

Section 17. Training Programs for Rule 31 Mediators

(a) Content of Training Programs

All Rule 31 mediators shall complete a course of training consisting of not less than forty hours, including the following subjects:

- (1) Rule 31 and procedures and standards adopted thereunder**
- (2) Conflict resolution concepts**
- (3) Negotiation dynamics**
- (4) Court process**
- (5) Mediation process and techniques**
- (6) Communication skills**
- (7) Standards of conduct and ethics for Rule 31 mediators**
- (8) Community resources and referral process**
- (9) Cultural and personal background factors**
- (10) Attorneys and mediation**
- (11) The unrepresented party and mediation**

(b) The forty hours of instruction for Rule 31 general civil case mediators will also include:

- (1) State rules, state statutes, and local procedures and forms affecting civil mediation**
- (2) Appropriate techniques for mediating with multiple parties**
- (3) Appropriate techniques for handling situations where individual(s) present do not have authority to settle**
- (4) Observation and role playing of trainees in general civil mediations**

(c) The forty hours of instruction for Rule 31 family mediators will also include:

- (1) State rules, state statutes and local procedures and forms governing family mediation**
- (2) Special ethical dilemmas arising in the family mediation context**
- (3) The constraints attending the mediation of cases where a threat of domestic violence exists**
- (4) Confidentiality as it relates to child abuse and spouse abuse**
- (5) The use of protective services, as in cases of child abuse, domestic violence, or elder abuse, and maintaining a list of these services**
- (6) Psychological issues in separation, divorce and family dynamics**
- (7) Issues concerning the needs of children in the context of divorce**
- (8) Family economics**
- (9) Observation and role playing of trainees in family mediations**

- (10) In addition to the forty-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 ADR Commission 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).**

Entered this 28th day of July, 1997.

PER CURIAM