

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: AMENDMENT TO SUPREME COURT RULE 31  
ALTERNATE DISPUTE RESOLUTION COMMISSION**

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**Filed: January 2, 2007**

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**ORDER**

Pursuant to its responsibilities as provided in Section 19 of Tennessee Supreme Court Rule 31, the Alternative Dispute Resolution Commission submitted to this Court a proposed amendment to Rule 31. In addition to memorializing well-settled policies developed following the initial passage of Rule 31, the proposed amendment incorporates modifications that will enable the Commission to efficiently and effectively evaluate and manage the alternative dispute resolution program.

In an order filed June 22, 2006, this Court solicited written comments from the bench, bar, and public regarding the Commission's proposed amendment to Rule 31. The deadline for submitting written comments expired on August 21, 2006. The Court appreciates the comments that were submitted.

Upon due consideration, this Court hereby amends Rule 31 by deleting the rule in its entirety and adopting revised Rule 31, which is attached hereto.

It is so ORDERED.

FOR THE COURT:

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WILLIAM M. BARKER, CHIEF JUSTICE

## **Amended Rule 31, Tenn. R. Sup. Ct.**

### **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 **AADRC** is the Alternative Dispute Commission established by the Supreme Court pursuant to this Rule.

(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 Accreditation (CHEA) and approved or listed by the United States Department of Education as a recognized accrediting agency.

(c) **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.

(d) **Court** includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit, Chancery, Law & Equity and Probate Courts, General Sessions Courts, Juvenile Courts, and Municipal Courts.

(e) **Eligible Civil Action** includes all civil actions except forfeitures of seized property, 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.

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

(g) "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.

(h) "Mediation<sup>@</sup> 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.

(i) "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.

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

(k) "Non-Binding Arbitration<sup>@</sup> 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.

(l) "Order of Reference<sup>@</sup> 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.

(m) "Rule 31 ADR Proceedings<sup>@</sup> are proceedings initiated by the court pursuant to this Rule, including "Case Evaluations," "Mediations," "Judicial Settlement Conferences," "Non-Binding Arbitrations," "Summary Jury Trials," "Mini-Trials," or other similar proceedings.

(n) "Rule 31 Mediator<sup>@</sup> is any person listed by the ADRC as a mediator pursuant to section 17 herein.

(o) "Rule 31 Neutral<sup>@</sup> 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.

(p) "Summary Jury Trial<sup>@</sup> 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 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 initiative, 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.

(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 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 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 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, 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 Mediations, Mini-trials, Non-Binding Arbitrations, Case Evaluations and any other appropriate alternative dispute resolution proceeding 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 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, for each seat on the

panel and one additional Rule 31 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 for each Neutral being selected from the court's nominations. The court then 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 will be repeated to the extent necessary.

(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 to file a final report pursuant to Rule 5.06, Tenn. R. Civ. P., with 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; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's 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.

(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 may, at the Rule 31 Neutral-s request, be charged as court costs. The request to charge the costs of the services of the Rule 31 Neutral(s)

should be submitted to the court as set forth in Section 5 of this Rule. If an appeal of the case is filed, the parties shall advise the court in their appellate briefs whether the Rule 31 Neutral(s) requested that the cost of the Rule 31 Neutral's services be included in the court costs.

The court may, in its sound discretion, waive or reduce the 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. Under Tenn. Sup. Ct. R. 8, RPC 2.4(c)(9), violation of any of these rules and procedures by any Rule 31 Neutral who is an attorney constitutes a violation of the Rules of Professional Conduct.

(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 which 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 before which the proceeding is pending 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, an Aevaluation<sup>®</sup> pursuant to a Case Evaluation, an Aaward<sup>®</sup> pursuant to a Non-Binding Arbitration, or an Aadvisory verdict<sup>®</sup> pursuant to a Summary Jury Trial will not be considered to be Alegal advice<sup>®</sup> 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) Rule 31 Neutrals shall 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 Mediators.**

(a) Any grievance against a Rule 31 Mediator who is not 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 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 Mediator 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 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.

**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 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.

**Section 17. 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 must pay application fees set by the ADRC and must comply with the qualifications and training requirements set forth in this section. All training must have been approved by the ADRC as set forth in section (f) below and must have been completed within the ten years immediately preceding the application seeking Rule 31 Mediator listing.

(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 and certify in writing an intention to comply with the conditions and obligations imposed by Rule 31, including those requirements related to pro bono obligations;

(B) have a graduate degree plus four years of practical work experience, or a baccalaureate degree plus six years of practical work experience; and

(C) complete 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 certification 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.

(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:

(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 have a baccalaureate degree with ten years practical experience in family mediation;

(C) have four years of practical work experience in psychiatry, psychology, counseling, social work, education, law, or accounting;

(D) complete 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) complete six additional hours of training in Tennessee family law and court procedure. It is provided, however, that the ADRC may waive this requirement for lawyers who have completed 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 17(c)(3)(A) through (I).

(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) 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; and

(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; and

(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) the use of protective services, as in cases of child abuse, domestic violence, or elder abuse, and maintaining a list of these services;

(E) psychological issues in separation, divorce and family dynamics;

(F) issues concerning the needs of children in the context of divorce;

(G) family economics; and

(H) observation and role playing of trainees in family mediations.

(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 17(a), (b) or (c): (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. 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 17.

(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 17(a), (b) or (c) 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.

(f) Trainer Procedure for Obtaining Curriculum Approval. 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.

(g) Procedure for Rule 31 Family Mediator's Additional Designation as ASpecially Trained in Domestic Violence Issues.® To obtain a designation as ASpecially Trained in Domestic Violence Issues,® the Rule 31 listed Family Mediator must have completed a twelve-hour course on domestic violence issues approved by the Training Committee of the ADRC 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 approved by the Training Committee.

(h) A sitting judge whose retirement or resignation is pending may apply to be listed as a Rule 31 Mediator. For purposes of this Rule, a sitting judge includes a part-time, full-time, or senior judge. Upon the ADRC's determination that the judge-applicant meets the qualifications and training requirements set forth in this Rule, the Commission shall notify the judge-applicant in writing that the requirements for being listed have been met. The Commission shall not list the judge-applicant as a Rule 31 Mediator until the effective date of the judge-applicant's retirement or resignation, at which time the judge-applicant may request in writing to be listed by the Commission as a Rule 31 Mediator. The Commission shall then place the judge-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 18. Additional Obligations of Rule 31 Mediators.** Rule 31 Mediators must maintain a current address with the Programs Manager of the Administrative Office of the Courts. Any change of address must be provided within thirty days of such change.

(a) To remain listed by the ADRC, Rule 31 Mediators shall comply with the following continuing mediation education requirements:

(1) Courses approved for continuing education under this Rule 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 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 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 the Rule 31 Family Mediator Listing continuing education requirements will also meet the Rule 31 General Civil Mediator listing requirements.

(3) Rule 31 Mediators who are attorneys are not exempt from the continuing mediation education requirements of Rule 31 Section 18(a) as a result of the age exemption for continuing legal education pursuant to Supreme Court Rule 21, Section 2.04(a).

(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 that he/she is in good standing with any professional licensing agency or organization, if applicable, and must pay the annual registration fee set by the ADRC.

(c) Inactive Status.

(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.

(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 the initiation of a mediation, the 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.

(e) 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 consistent with the requirements of Section 19(a)(8) as to any mediation conducted by a Rule 31 Mediator, including those mediations which are not subject to Rule 31. The report forms will be available on the AOC website and from the AOC.

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

(B) 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

(C) 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**

### **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 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;

(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 to the Supreme Court rules and amendments of 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 ADRC and approved by the Supreme Court;

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

(3) Taking such steps as may be necessary to provide lists of Rule 31 Mediators to the appropriate clerks of court;

- (4) Coordinating, approving, or providing training to Rule 31 Mediators;
- (5) Processing grievances against Rule 31 non-attorney 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 dispute resolution program in Tennessee.

## **PROVISIONS RELATIVE TO PARTICULAR RULE 31 ADR PROCEEDINGS OTHER THAN MEDIATION**

**Section 20. Judicial Settlement Conferences.** Trial courts are authorized to conduct Judicial Settlement Conferences. 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 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. Neutrals serving in Non-Binding Arbitrations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

**Section 22. 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. Neutrals serving in Case Evaluations will be subject to Appendix A, Standards of Conduct for Rule 31 Neutrals.

**Section 23. 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, 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. 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, 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 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.

APPENDIX B

IN THE \_\_\_\_\_ COURT  
FOR \_\_\_\_\_ COUNTY, TENNESSEE

Plaintiff,

v.

Defendant.

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NO.

**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:

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JUDGE

APPENDIX C

IN THE \_\_\_\_\_ COURT  
FOR \_\_\_\_\_ COUNTY, TENNESSEE

Plaintiff,

v.

Defendant.

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NO.

**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:

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JUDGE



APPENDIX D

IN THE \_\_\_\_\_ COURT  
FOR \_\_\_\_\_ COUNTY, TENNESSEE

Plaintiff,

v.

Defendant.

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NO.

**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 ADRC.

**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:

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JUDGE

APPENDIX E

IN THE \_\_\_\_\_ COURT  
FOR \_\_\_\_\_ COUNTY, TENNESSEE

Plaintiff,

v.

Defendant.

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NO.

**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

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JUDGE