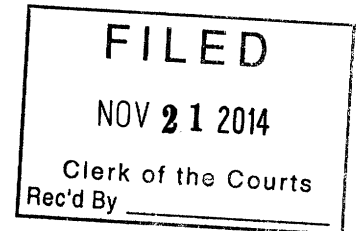


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION FOR THE ADOPTION OF AMENDED
TENNESSEE SUPREME COURT RULE 31

No. M2013-01612-SC-RL1-RL



ORDER

On July 15, 2013, the Alternative Dispute Resolution Commission (“Commission”) filed a petition asking the Court to amend Sections 2, 3, 4, 5, 9, 10, 11, 17, 18, and 19 of Rule 31, Rules of the Tennessee Supreme Court. On July 22, 2013, the Court filed an order soliciting written comments on Commission’s proposed amendments from the bench, the bar, and the public. After the expiration of the public-comment period, the Court asked the Commission to consider the written comments received during the comment period. The Commission thereafter appointed a committee to review the public comments and to propose any modifications to the amendments in light of those comments. The committee recommended that the Commission adopt several changes to the proposed amendments, and the Commission adopted the committee’s suggested changes. The Commission then submitted its modified proposed amendments to the Court.

The Commission’s modified proposed amendments are attached as an appendix to this order. [For the sake of simplicity, the Court notes that the only proposed amendments that were modified by the Commission are the amendments to Sections 10(d), 17(d)(1), and 18(b).] The Court hereby publishes the proposed amendments, as modified by the Commission, and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Monday, December 22, 2014. Written comments should be addressed to:

James Hivner, Clerk
Re: Tenn. Sup. Ct. R. 31
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

**Alternative Dispute Resolution Commission's
Modified Proposed Amendments to Tenn. Sup. Ct. R. 31**

(proposed new text indicated by underlining;
proposed deleted text indicated by ~~overstriking~~)

(NOTE: provisions of the existing rule that are omitted below
will be retained in their current form.)

[Delete Section 2 and replace it with the following new Section 2; in addition to the proposed new text and the proposed deleted text indicated below, the sequential paragraph designations are changed due to the new definitions added to Section 2:]

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

4 (b) “Alternative Dispute Resolution Commission” or “ADRC” is the Alternative Dispute
5 Commission established by the Supreme Court pursuant to this Rule.

6 (c) “Baccalaureate degree” and “graduate degree” are only those degrees awarded by an
7 institution of higher education accredited by an agency recognized by the Council for Higher
8 Education (CHEA) and approved or listed by the United States Department of Education as
9 a recognized accrediting agency. A law degree from an educational institution recognized by
10 the Tennessee Board of Law Examiners for the purpose of allowing its graduates to be
11 eligible to take the Tennessee bar examination shall be deemed a graduate degree for the
12 purpose of this rule. Degrees earned outside the United States shall be evaluated on a case
13 by case basis by the Commission in order to determine whether the degree is substantially
14 equal to a like and similar degree earned in this country and which degree if earned in this
15 country would have been subject to the standards and academic quality which would be
16 mandated by the foregoing accreditation process and procedure in this country.

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

22 (e) “Court” includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit,
23 Chancery, Law & Equity and Probate Courts, General Sessions Courts, Juvenile Courts, and
24 Municipal Courts.

25 (f) “Days,” for purposes of the deadlines imposed by this Rule, means calendar days.

26 (g) “Eligible Civil Action” includes all civil actions except forfeitures of seized property,
27 civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile
28 delinquency cases. The term “Extraordinary writs” does not encompass claims or
29 applications for injunctive relief.

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

34 (i) “Judicial Settlement Conference” is a mediation conducted by a judicial officer as set
35 forth in section 20 herein.

36 (j) “Mediation” is an informal process in which a neutral person conducts discussions among
37 the disputing parties designed to enable them to reach a mutually acceptable agreement
38 among themselves on all or any part of the issues in dispute.

39 (k) “Mediator” is a neutral person who conducts discussions among disputing parties to
40 enable them to reach a mutually acceptable agreement among themselves on all or any part
41 of the issues in dispute.

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

47 (m) “Neutral” is an impartial person who presides over alternative dispute resolution
48 proceedings as defined in this Rule.

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

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

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

60 (q) A “Rule 31 Mediator” is any person listed by the ADRC as a mediator pursuant to section
61 17 herein.

62 ® A “Rule 31 Neutral” is any person who acts as a Neutral in a Mediation, Case Evaluation,
63 Mini-Trial, Non-Binding Arbitration, Summary Jury Trial, or any other similar proceeding
64 initiated by the court pursuant to this Rule. Rule 31 Neutrals, other than Rule 31 Mediators,
65 are required to be licensed attorneys.

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

71 **[Amend Section 3(a) as follows:]**

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

74 **[Amend Section 4(c) as follows:]**

75 (c) ~~The clerks for each judicial district~~ The Programs Manager of the Administrative Office
76 of the Courts shall maintain and make available to the public upon request, a list of Rule 31
77 Mediators listed by the ADRC, the date of their approval, and their qualifications and
78 expertise by posting on the AOC website a list of Rule 31 Mediators listed by the ADRC, the
79 date of their approval, and their occupation and contact information.

80 **[Amend Section 5 as follows:]**

81 (a) The Order of Reference shall require the Rule 31 Neutral to ~~file~~ submit a final report
82 pursuant to Rule 5.06, Tenn. R. Civ. P., with the court at the conclusion of the Rule 31 ADR
83 Proceeding. The final report shall state only (i) which parties appeared and participated in
84 the Rule 31 ADR proceeding, (ii) whether the case was completely or partially settled; and
85 (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged
86 as court costs. The report shall be filed within the time specified in the Order of Reference.
87 In the event the Order of Reference does not specify a deadline, the final report shall be ~~filed~~
88 submitted within 60 days of the initial meeting with the parties, or within the time period
89 specified by the court.

90 ~~(b) Unless otherwise directed by the Order of Reference, the Rule 31 Neutral shall file status~~
91 ~~reports with the court every 30 days until the Rule 31 ADR Proceeding is concluded.~~

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

94 **[Amend Section 9(d)(4) as follows:]**

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

100 **[Amend Section 10 by adding new paragraphs (e) and (f) as follows:]**

101 (e) The Neutral may assist the parties in memorializing the terms of the parties' settlement
102 at the end of the mediation.

103 (f) Rule 31 Neutrals shall not be called as a witness to enforce any terms of the resulting
104 agreement.

105 **[Amend Section 11(b)(18) as follows:]**

106 (b) (18) Once the Grievance Committee has issued an opinion, a synopsis of the case may
107 be published in the ADRC quarterly newsletter and on the AOC website. If the mediator is
108 not publicly sanctioned, the name of the complainant and mediator will not be included in
109 the synopsis.

110 **[Amend Section 17(a), (b), and (d) as follows:]**

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

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

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

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

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

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

127 (b) Rule 31 Mediators in Family Cases.

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

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

133 (C) have four years of full time practical work experience in psychiatry, psychology,
134 counseling, social work, education, law or accounting. Full time practical work experience
135 shall be defined as 35 hours or more of work per week.

136 (E) complete six additional hours of training in Tennessee family law and court procedure.
137 It is provided, however, that the ADRC may waive this requirement for ~~lawyers~~ applicants
138 who have completed at least six hours of ADRC-approved training devoted to Tennessee
139 family law and/or procedure within the three-year period immediately prior to the completion
140 of the requirements of Section 17(c)(3)(A) through (I).

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

142 (1) Upon petition to and acceptance by the ADRC, the following persons may be qualified
143 as Rule 31 Mediators without first complying with the qualification and training
144 requirements set forth in Section 17(a), (b), or (c): (i) ~~graduates of accredited law schools~~
145 persons holding graduate degrees who have passed a ~~law school~~ mediation course, which
146 awards at least three semester hours credit, and which includes the curriculum components
147 set forth in this Rule or their substantial equivalent as determined by the ADRC, and who
148 have four years of full time practical work experience; (ii) trained mediators who
149 substantially comply with the qualifications set forth for Rule 31 Mediators in general civil
150 cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the
151 assistance of the AOC Programs Manager, provided that their training be the substantial
152 equivalent of that required under this Rule and that the training has been completed within
153 fifteen years prior to the application; (iii) if a trained mediator has complied with the
154 qualifications for approval as a mediator by another state and such approval has been granted,
155 and if the mediator is in good standing in such state at the time of the application for approval
156 in Tennessee, the ADRC may, upon review of the qualifications of the applicant, waive such
157 training requirements as required by Section 17; and (iv) alternative dispute resolution
158 professors at accredited law schools or graduate schools who have taught a mediation course
159 which awards at least three semester hours credit for at least two semesters and which
160 includes the curriculum components set forth in this Rule or their substantial equivalent as
161 determined by the ADRC and who have four years of full time practical work experience.

162 **[Amend Section 18 as follows:]**

163 (b) Annual Renewal of Rule 31 Mediator Status. As a condition of continued listing, each
164 Rule 31 mediator must file an ~~annual report~~ annual renewal form with the AOC Programs

165 Manager attesting that he/she is in good standing with any professional licensing agency or
166 organization, if applicable, and must pay the annual registration fee set by the ADRC.¹

167 (c) Inactive Status.

168 (3) A Rule 31 Mediator placed on inactive status may apply to the ADRC for reactivation.
169 To be approved for reactivation, the Rule 31 Mediator must complete all the continuing
170 mediation education required by Rule 31 during the period of inactive status and must pay
171 the renewal fee for the year in which the Rule 31 Mediator reactivates. The Programs
172 Manager will review the request, determine if requirements have been met and, if met, place
173 the Rule 31 Mediator on active status. If the Program Manager denies reactivation, that
174 decision may be appealed to the ADRC. A Rule 31 Mediator placed on inactive status for at
175 least fifteen consecutive calendar years will not be eligible to apply to the ADRC for
176 reactivation. After fifteen consecutive calendar years, the Rule 31 Mediator's listing will be
177 terminated and the Rule 31 Mediator will have to fulfill listing requirements pursuant to Rule
178 31, Section 17.

179 **[Amend Section 19 as follows:]**

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

182 (2) Processing ~~annual reports~~ annual renewal forms from Rule 31 mediators and approving
183 their continued qualification for Rule 31 listing;

¹ The Commission's original proposed amendment of Section 18(b) included the proposed addition of the following text:

The Rule 31 Mediator must 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 Mediator will be put on the inactive list by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist.

In its modified proposed amendments, the Commission asked the Court to delete the foregoing text from the original proposal.

184 (3) Taking such steps as may be necessary to provide lists of Rule 31 mediators to the
185 appropriate clerks of court and to maintain a current list of Rule 31 mediators on the AOC
186 website;

187 (5) Processing grievances against Rule 31 ~~non-attorney~~ Mediators;

188 *[end of Appendix]*