

ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission
Spring 2018 Volume 18, Issue 2

TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

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Important News

The Tennessee Supreme Court has issued an Order Soliciting Comments to Proposed Rule Amendments to SCT R31, Appendix A to Rule 31, & Proposed R31A. The docket number is **ADM2018-00425**. The Order Soliciting Comments along with the Petition of the ADRC, Redlined Version of the Proposed Rule, and Clean Version of the Proposed Rule are available on the [AOC's website](#).

Comments must be made in writing and should reference docket number **ADM2018-00425** and may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Please note that the deadline for public comments is **June 12, 2018**.

Fast Stats

Pursuant to Rule 31, Section 18(e) Mediators shall be required to submit to the ADRC reports of any data requested by the ADRC.



The ADRC received mediation reports from 213 Rule 31 Listed Mediators for matters attributed to 89 of Tennessee's 95 counties for the 1st Quarter of 2018 (January 1 – March 31, 2018). This shows that mediation is prevalent across the State; however, the Commission is concerned that these numbers do not reflect the true impact of mediation. Rule 31 Listed Mediators are required to submit reports in order to help the Commission and court system have accurate data regarding mediations in Tennessee.

The statistics were compiled from reports submitted by Rule 31 listed mediators per ADRC Policies 10 and 22. All statistics can be found [here](#) in the "Submit Rule 31 Report" section.

Reporting Q & A

Test your Rule 31 knowledge! This newsletter section will feature frequently asked questions regarding Rule 31 and ADRC Commission Policies. This quarter's focus is on reporting requirements.

How do I see the compiled statistics?

Please visit:
<http://www.tncourts.gov/programs/mediation/resources-mediators/submit-rule-31-report>

When we discuss the impact of mediation with Judges, Clerks, and other stakeholders these are the numbers we use! Please be sure to file your report with the ADRC via the AOC's website and have your valuable contributions to the justice system counted!

What is my username and password?

Are there specific requirements for what to include in the final report to the court?

Yes, Rule 31, Section 5 provides the 3 items that are required to be included in the final report to the court. The final report to the court should only include the 3 items listed – no more, no less.

Rule 31, Section 5. Reports

(a) *The Order of Reference shall require the Rule 31 Neutral to submit 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 submitted 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 submitted within 60 days of the initial meeting with the parties, or within the time period specified by the court.

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

How does the ADRC receive information about mediations I conduct? Is there "another report" I need to fill out?

Yes, each Rule 31 Mediator must visit the AOC's website, <http://www.tncourts.gov/programs/mediation/resources-mediators/submit-rule-31-report>, to fill out a report for use by the ADRC for data compilation purposes. The ADRC does not receive any reporting information from Section 5 reports submitted to the local courts.

You can enter the Court, County, City, Docket No., Plaintiff, and Defendant and utilize the AOC report to prepare a printable document that can be submitted to the court or create a record for yourself. However, entering the above fields is not required. It is neither collected nor recorded nor is it stored in any manner by the Administrative Office of the Courts, thereby maintaining confidentiality of the matter.

Rule 31, Section 18. *Additional Obligations of Rule 31 Mediators (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.

Rule 31, Section 19 *Alternative Dispute Resolution Commission*
(a) ...*The ADRC shall have the responsibility for:*
(8) *Evaluating the success of Rule 31 ADR Proceedings based on participant satisfaction, quality of results, and effect on case management;*

Important Dates

June 1, 2018 - Rule 31 Mediator Applications Deadline for ADRC review on July 24, 2018

July 24, 2018 - ADR Commission Meeting, AOC Office, Nashville

August 17, 2018 - Rule 31 Mediator Applications Deadline for ADRC review on October 11, 2018

October 11, 2018 - ADR Commission Meeting, AOC Office, Nashville



If you have misplaced your username and password, you must email ADRRegistration@tncourts.gov and request that it be re-sent. At this time, a Rule 31 Mediator is not able to change his or her username and password. You must login using the username and password provided by the AOC. You should have received a letter from the ADRC with your username and password. If you do not have it, please email ADRRegistration@tncourts.gov to request your username and password. Emailing ADRRegistration@tncourts.gov will expedite this process for everyone.

How long do I have to file a report with the ADRC? Which mediations am I required to file a report regarding?

Rule 31 Mediators have 15 calendar days from the date of the last mediation session to submit reports to the ADRC regarding any mediation INCLUDING:

- Federal court (When completing the report, please indicate the County that best addresses the matter.)
- Non-court ordered mediations
- Pre-litigation mediations
- Pro bono, reduced fee, and mediations paid for by the State's Divorcing Parent Education and Mediation Fund as provided in TSC Rule 38
- ANY mediation conducted by a Rule 31 Mediator

The only exception is that reports should not be submitted for mediations conducted for matters pending in state courts outside of Tennessee.

If you are reading this and realize that you have not yet filed a report with the ADRC for mediations that you conducted in 2018, please visit <http://www.tncourts.gov/programs/mediation/resources-mediators/submit-rule-31-report> to submit your reports on mediations conducted since January 1, 2018.

ADR Commission Policy 10.

Effective January 1, 2008 all mediators listed pursuant to Supreme Court Rule 31 will be required to submit reports as prescribed by the Commission, regarding any mediation beginning on or after January 1, 2008 except as to matters pending in state courts outside of Tennessee. Mediators will have 15 calendar days from the date of the last mediation session to submit the report to the AOC. This policy does not affect any other reporting obligation required of a Rule 31 listed mediator. (Modified January 1, 2016)

ADR Commission Policy 22.

Rule 31 mediators will be required to report federal court system mediations through the AOC online process. (January 1, 2016).

Summary of ADR April Commission Meeting

During the April 24, 2018 quarterly meeting, the ADR Commission considered 36 new mediator applications and reviewed Committee reports.

Communication Path

Written inquiries submitted via email to patricia.mills@tncourts.gov are preferred so that the Programs Manager can review and/or forward the correspondence to the appropriate body for consideration and response.



In an effort to encourage education and communication between and for Rule 31 listed mediators, the ADRC accepts proposed article submissions from Rule 31 listed mediators and others in the ADR News. Submissions may or may not be published and are subject to editing according to the Program Manager's discretion. If you are interested in submitting an

Congratulations to the following recipients of the 2018 Grayfred Gray Public Service Award presented by the Tennessee Association of Professional Mediators (TAPM):

This year's award recipients are:

- Mary Ellen Bowen, Mid-South Mediation Services
- Wanda Bermudez, Medi8Resolution Center
- Sara Figal, Nashville Conflict Resolution Center
- Linda Nettles Harris, Esq., Mid South Community Justice & Mediation Center
- Cindy Helton, Community Mediation Services
- Jacqueline O. Kittrell, Esq., Community Mediation Center
- Jennifer Paden, Community Mediation Inc.
- Beth Tarter, Esq., The Mediation Center
- Cecile Wimberly, Esq., Neighborhood Reconciliation Services
- Rita Young, Community Mediation Center

Congratulations to the following newly listed Rule 31 Mediators! These mediators were approved for listing at the ADRC quarterly meeting on April 24, 2018.

General Civil

Neil E. Barnes
Timothy J. Battaglia
Tasha C. Blakney
Lisa J. Boyle
Kay M. Brandt
Thomas M. Brodhead
Mary F. Bruck
Stewart M. Crane
Kathleen R. Gordon
Phillip D. Grissom
Becky Iouse
Timothy R. Johnson
Alvinita Jones
Tabitha J. Liburd
Jessica D. Lovely
Kathryn W. Olita
Steven D. Parman
Emily H. Plotkin
Eric Sitler
Tiara N. Wilkins

**Designation as "Specially Trained in Domestic Violence Issues"*

Family

John A. Anderson
Devyn M. Bayes
Cindy L. Brown
Deana C. Ferguson
John B. Holt
John R. Holley
James White, Jr.*

General Civil/Family

Bylinda L. Bell*
Stephanie G. Crippen*
Andrew S. Cunnyngham
Jedidiah C. McKeehan
Daniel Mark Nolan
Stephanie L. Prager
Gary L. Smith*
Suzanne K. Tipton
Natalie Vantrease

AOC Resources

Rule 31 Listed Mediators can find many resources on the AOC website. Resources include forms, 2018 Renewal form, Rule 31 mandatory reporting forms, and information on CME online courses can be found [here](#).

Also on the AOC website are ADRC policies, ADR Ethics Advisory Opinions, AG Opinions on mediation issues, information about the ADRC Commission, and Trainer information. Check out the [AOC website](#) to find great resources to help you in your mediation practice.



Privacy/Confidentiality

By: Virginia Story

In the last three ADR Newsletters, the Commissioners have selected one of the six general principles found in Section 1(c) of Appendix of Rule 31 to be included in the Newsletter. As stated in prior Newsletters, most states in our nation give specific yet differing rules pertaining to Mediation. These rules differ from one state to another; however, the General Principles of Standards of Mediator Conduct are remarkably congruent across the nation. We celebrate these core principles that give foundation and structure to the ADR process called Mediation. The six general principles found in Section 1(c) of Appendix A of Rule 31 are:

1. Needs and Interests of the participants
2. Fairness
3. Procedural Flexibility
4. Privacy/Confidentiality
5. Full Disclosure
6. Self-Determination

The framers of Supreme Court Rule 31 were visionaries. I ponder whether the framers of Rule 31 had any idea how helpful this Rule would be to litigants, the Court system and the legal system as a whole. Rule 31 Mediation provides a medium for parties as they are going through the agonizing process of a legal matter to resolve their disputes without the costs of the Courtroom and/or the emotional trauma that a Courtroom battle may cause. Rule 31 has truly changed the landscape of the legal system. The focus on parties having control of the outcome of their disputes and having a Rule 31 Listed Mediator, a neutral with proper training and experience, to guide this process in a solution based methodology has resulted in success! Thousands of disputes are resolved by the Alternate Dispute Resolution process in the State of Tennessee each quarter. The number of disputes resolved in the Rule 31 process are historically over 1,400 per quarter across Tennessee. This number is low as all Mediations are not properly reported to the ADR for the statistical data report. The Mediation process must be conducted with the utmost professionalism observing the core mandates of privacy and confidentiality. Our clients, parties to a lawsuit, parents, etc., come into our offices and freely share the most intimate, troubling and personal details of their lives because they trust that we will maintain their privacy and confidentiality. We are to be professionals who comply with our ethical standards and hold their confidences secret and private. Rule 31 Mediators explain this core principle at the onset of the Mediation session thus making all participants are aware of the ethical standards of our professions and in particular that they may freely provide the necessary information regarding their dispute so that Rule 31 Mediation may have a positive outcome; however, this information CANNOT be used against them in any future litigation.

Participants in mediation know that what they share in Mediation stays in Mediation and no person, not even our Courts can require a Rule 31 Mediator to divulge confidences made known to the Rule 31 Mediator. Below are applicable sections of Rule 31 which I commend for review:

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 10. Obligations of Rule 31 Neutrals

(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 Mediations without the consent of the parties, except as otherwise may be required by law.

Section 12. Immunity

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

See also Appendix A – Standards of Professional Conduct for Rule 31 Neutrals