



Tennessee ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

VOLUME 7, ISSUE 1

SPRING 2007

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Supreme Court Appoints Two New ADR Commission Members

Tommy Hulse. This newly appointed Kingsport Commission member has more than 40 years of mediation experience. Mr. Hulse has also been dually listed as a Rule 31 General Civil and Family mediator since the Alternative Dispute Resolution Commission's inception in 1997. The majority of Mr. Hulse's mediation practice is in automobile accident cases. He also provides mediation services in Rule 37 Worker's Compensation Appeals. Among many other affiliations, he is a member of the American Arbitration Association, Federal Mediation and Conciliation Service, American Registry of Arbitrators, Association for Conflict Resolution, Association of Legal Administrators, American Judicature Society, and National Association of Legal Investigators.

Ed Silva. Mr. Silva is a partner in the Franklin firm of Hartzog & Silva, PLC, where his main areas of practice are family law, personal injury, and commercial law. He has been a trial attorney for over 32 years and is a certified civil trial specialist by the Tennessee Commission on Continuing Education and Specialization and the National Board of Trial Advocacy. Mr. Silva is also a Rule 31 listed General Civil Mediator. He is a member of the Tennessee Bar Association, American Bar Association, and the Association of Trial Lawyers of America. He is a Past President of the Williamson County Bar Association and was elected a Fellow in the Tennessee Bar Foundation. Mr. Silva is also listed in *The Best Lawyers in America* and *Mid-South Super Lawyers*.

Summary of Substantive Changes to Supreme Court Rule 31 As Amended January 2, 2007

Note: Some of the following Rule 31 provisions are entirely new, while others were ADRC policies that have now been incorporated into the Rule.

Supreme Court Rule 31 now includes several new definitions and clarifies others.

- Definitions of “Mediator,” “Neutral,” “Baccalaureate Degree,” and “Graduate Degree” were added.
- The definition of “Court” was modified by removing the language “when exercising the jurisdiction of Courts of Record” referring to General Sessions and Juvenile Courts and added Municipal Courts.
- The term “Judicial Settlement Conference” was redefined to allow a judge presiding over a matter to also preside over a Judicial Settlement Conference with the consent of the parties.
- The definition of “Rule 31 Neutral” was modified to require a Rule 31 Neutral who is not also a Rule 31 Listed Mediator to be a licensed attorney.

All references to Local Rules or “Standing Orders” were deleted from the Rule.

Language was added to the Rule that the Order of Reference shall require the neutral’s final report to be filed pursuant to Rule 5.06 of the Tennessee Rules of Civil Procedure.

The Rule now requires Rule 31 Neutrals to include requests to charge the cost of services as court costs in their final report to the Court. Furthermore, 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.

Under the section entitled “Standards of Professional Conduct for Rule 31 Neutrals,” the Rule now includes reference to Tennessee Supreme Court Rule 8, Rules of Professional Conduct, 2.4(c)(9) regarding violation of Rule 31 if one is an attorney.

The word “Mediator” was substituted for “Neutral” regarding proceedings for discipline, and language was added that a decision by the ADRC regarding discipline is final.

Significant changes were made to Sections 17 and 18 of the Rule. Section 17 now exclusively addresses Initial Listing as a Rule 31 mediator. The following are additions or clarifications to Section 17:

- Language was added that all training must have been approved by the ADRC as set forth in Section 17(f), and must have been completed within the ten years immediately preceding the application listing.
- Requirements for listing as a General Civil Mediator and Family Mediator are now grouped separately.
- When reviewing an initial application for listing as a Rule 31 Mediator, the Commission will now consider an applicant’s standing with regard to any professional licensing agencies.
- The Rule now allows a person with a baccalaureate degree and ten years practical work experience in family mediation to become a Rule 31 Listed Family Mediator. (Prior to this Rule change, only a CPA or a person with a graduate degree could become a Rule 31 Listed Family Mediator.)
- If an applicant seeks to waive training requirements, he/she will be assessed an additional application fee for review of their application by the ADRC.
- Applicants, who are qualified as mediators in another state and are in good standing with the other state, may now seek to have the training requirements of Section 17 waived.

See “Summary . . .” (Continued, page 3)

Summary of Substantive Changes to Supreme Court Rule 31 . . .

(Continued, from page 2)

- The Rule now includes subsections entitled “Trainer Procedure for Obtaining Curriculum Approval” and “Procedure for Rule 31 Family Mediator’s Additional Designation as ‘Specially Trained in Domestic Violence Issues,’” as well as a subsection that allows application for listing by a sitting judge whose retirement or resignation is pending.

Section 18 now contains all Renewal Requirements for Rule 31 Listed Mediators. The following are additions or clarifications to Section 18:

- Language was added that requires all Rule 31 Listed Mediators to maintain a current address with the Programs Manager of the Administrative Office of the Courts, and further requires that any change of address must be provided within thirty days of such change.
- The Continuing Education section of the Rule was revised to clearly delineate how many and what types of hours are required for each type of listing – General Civil and Family.
- Information was added regarding what types of courses will be approved for the Continuing Mediation Education requirements.
- A statement was added that attorney Rule 31 Mediators are not exempt from the Continuing Mediation Education requirements as a result of the age exemption for CLE.
- As part of the renewal process, 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.
- A Rule 31 Listed Mediator may request to be placed on Inactive status for any reason, and

failure to complete the Rule 31 Mediator’s annual renewal will cause the mediator to be placed on Inactive status.

- The Rule now lists the procedure to be placed back on Active status.
- The new subsection entitled “Reports Required of Rule 31 Mediators” requires Rule 31 Mediators to submit to the ADRC reports of any data requested by the ADRC related to evaluating the success of Rule 31 ADR proceedings based on participant satisfaction, quality of results, and effect on case management. This applies to any mediation provided by a Rule 31 Listed Mediator, including those mediations not subject to Rule 31. This data collection will assist in the ongoing evaluation process of Rule 31 and ADR proceedings.
- The new subsection entitled “Procedure Upon Revocation or Suspension” was added to address the suspension or revocation of professional licenses and the concurrent imposition by the ADRC of the identical discipline unless the Rule 31 Mediator appeals to the ADRC the imposition of such discipline.

Under Section 19 of the Rule, the Programs Manager duties in Subsection 4 were changed to only require the Programs Manager to coordinate, approve, and provide training to Rule 31 Mediators, not Rule 31 Neutrals. Further, the Programs Manager is no longer required to assist Rule 31 Mediator applicants in fulfilling any observation requirements.

Language was added to the Rule that Non-Binding Arbitration can be authorized by the trial court with the consent of the parties.

Language was added to the Rule that Case Evaluations can be authorized by the trial court with the consent of the parties.

Lipscomb and Sullivan Universities Now Offering ADRC Approved Mediation Courses

The Alternative Dispute Resolution Commission has approved the curriculum of two new mediation training providers for Rule 31 mediator applicants. A 40-hour General Civil Mediation course offered by The Institute for Conflict Management at Lipscomb University, Nashville, and a 46-hour Family Mediation course provided by the International Center for Dispute Resolution & Leadership at Sullivan University, Louisville, Kentucky, are now ADRC approved trainings.

Lipscomb University's Institute for Conflict Resolution instructors include Larry Bridgesmith, who is the Executive Director of the Institute, and Mark C. Travis, who currently serves as an Adjunct Professor of Human Resources Law and Conflict Management Negotiation at Tennessee Technological University.

Course instructors for the International Center for Dispute Resolution & Leadership at Sullivan University include Tony Belak, Monet Deshler, and Sue Hamilton. Mr. Belak serves as the Center's Executive Director; Ms. Deshler and Ms. Hamilton currently work for the Center on various projects such as creating and designing corporate systems to increase profitability and participating in training engagements nationwide.

A complete list of providers with ADRC approved curriculum for General Civil and Family mediator listing, and for Family mediators to be designated as "Specially Trained in Domestic Violence Issues," can be found on the AOC website at www.tncourts.gov (from the AOC homepage select Programs & Services then ADR/Rule 31 Mediation, then scroll down the ADR webpage and make selections from #2 under the section entitled How to Become Listed as a Supreme Court Rule 31 Mediator).

Upcoming Events

- April 23, 2007.....ADR Commission Meeting
AOC Offices, Nashville
- October 12, 2007.....ADRC Sponsored Mediation Workshop
Vanderbilt University Law School, Nashville
- July 31, 2007.....ADR Commission Meeting
AOC Offices, Nashville
- October 30, 2007.....ADR Commission Meeting
AOC Offices, Nashville

We Would Like to Hear from You!

The Administrative Office of the Courts gladly accepts articles from ADR professionals for publication in the Tennessee ADR News. For more information, please contact Andrea Ayers at 615-741-2687 or andrea.ayers@tscmail.state.tn.us.