

Summary of Grievance Opinion

This matter came to be heard before the Grievance Committee of the Alternative Dispute Resolution Commission and on appeal from the mediator with a de novo hearing before the remaining members of the Alternative Dispute Resolution Commission. The mediator conducted a custody mediation. After the mediation, the mediator sent the final report via email to the Judge and copied the parties' attorneys, the guardian ad litem, the court clerk, and the co-mediator. In said email, the mediator addressed the Judge by the Judge's first name and conveyed the mediator's concern whether an attorney present at the mediation could properly (equally) represent the interests of all of his/her clients. The Alternative Dispute Resolution Commission decided that the mediator violated the following list of Rule 31 and Standards of Professional Conduct sections. The Alternative Dispute Resolution Commission sanctioned the mediator by private admonition and required the mediator to complete a Tennessee Continuing Legal Education Commission approved one (1) hour course on mediation ethics.

Rule 31, § 5(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.

- Noting that the rule does not permit the mediator to provide any further information to the Court, the mediator, by providing this email to the Judge with the language as described, violated Rule 31, §5(a).

Rule 31, § 9(a)

Rule 31 Neutrals shall avoid the appearance of impropriety.

- By addressing the Judge by his/her first name in the email final report and simultaneously copying all parties, the mediator violated Rule 31, §9(a).

Rule 31, § 10(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.

- Because the email report contained information that is beyond what is allowed by Rule 31, §5(a), the mediator violated Rule 31, §10(d) by copying the email to the other parties.

Appendix A, § 6(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.

- The mediator violated Rule 31, Appendix A, §6(a) by favoring one party's interests over another party's interests.