

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



**IN RE: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME
COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW**

No. ADM2017-01195

**RESPONSE OF ALTERNATIVE DISPUTE RESOLUTION COMMISSION
TO TENNESSEE BAR ASSOCIATION'S PROPOSED SUPREME COURT RULE 53
CONCERNING COLLABORATIVE FAMILY LAW**

INTRODUCTION

On June 22, 2018, the Court issued an Order directing the Alternative Dispute Resolution Commission (hereinafter "ADRC") to formally comment on proposed Rule 53 concerning Collaborative Family Law submitted by the Tennessee Bar Association (hereinafter "TBA").

The ADRC Chairperson appointed an Ad Hoc Committee to review the proposal along with related documents and draft a response. After the Ad Hoc Committee's presentation to the ADRC and discussion, the ADRC approved this response at its July 24, 2018 meeting.

RESPONSE REGARDING SCOPE

The ADRC recognizes that a "Collaborative family law process" is a voluntary, contractually based procedure with a court's involvement limited to review of settlement documents. See proposed Rule 53, Section 1 and 2(a).

In distinguishing between Collaborative family law and Rule 31 Mediation, the TBA cites Section 3 of Rule 31 in its Petition filed June 13, 2017. Rule 31 addresses court-annexed proceedings, and Section 3 discusses the initiation of a Rule 31 ADR Proceeding:

- (a) Rule 31 ADR Proceedings may be initiated by the consent of the parties or 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 or Mediation.

The ADRC agrees with this distinction between these two forms of dispute resolution and supports separate rules in order to provide clarity to practitioners and the public on these unequivocal processes.

RESPONSE REGARDING TRAINING REQUIREMENTS

In considering and ultimately rejecting a mandatory training requirement for Collaborative family lawyers, page 4 of the TBA's response filed February 9, 2018 mentions Rule 31 Mediator Training. Therefore, the ADRC would like to clarify the training requirements for one to be listed as a Rule 31 Mediator.

Section 17 of Rule 31 outlines the requirements for an applicant to be listed by the ADRC as a Rule 31 Mediator, including completing a training course of at least 40 hours. Section 17 specifies that training must have been approved by the ADRC and include the below:

(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;
- (K) the unrepresented party and mediation; and
- (L) confidentiality requirements, and any exceptions thereto as required by law.

Please see Rule 31, Section 17(a)(1)(C) for the specific requirements to be listed by the ADRC as a Rule 31 General Civil Mediator, Section 17(b)(1)(D)-(E) to be listed as a for Rule 31 Family Mediator, and Section 17(g) for the Specially Trained in Domestic Violence Issues designation.

Further, Rule 31 Listed Mediators are obligated to take six hours of continuing mediation education courses every two years in order to maintain mediation skills and knowledge as outlined in Section 18(a).

Pursuant to the Provisions for Administration of the Rule identified in Section 19(a)(6), the ADRC is charged with "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." By "evaluating and reviewing each listed Rule 31 Mediator for continued compliance with the established standards", the ADRC will continue to provide oversight pursuant to Section 19(a)(9) for those serving in the role of a Rule 31 Mediator.

CONCLUSION

The ADRC supports proposed Rule 53 regarding Collaborative family law.

Respectfully submitted this 24th day of July, 2018.



Edward P. Silva, Chairperson
Alternative Dispute Resolution Commission
Hartzog & Silva
123 5th Avenue North
Franklin, TN 37064
esilva@hartzogsilva.com