

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

FILED

JUL 22 2013

Clerk of the Courts

ORDER

On July 15, 2013, the Alternative Dispute Resolution 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. The Commission's proposed amendments are set out in the attached Appendix to this Order.

The Court hereby publishes the proposed amendments for public comment and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Wednesday, January 15, 2014. Written comments should be addressed to:

Michael W. Catalano, 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
Proposed Amendments to Tenn. Sup. Ct. R. 31**

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

[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:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Amend Section 3(a) as follows:]

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

[Amend Section 4(c) as follows:]

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

[Amend Section 5 as follows:]

(a) The Order of Reference shall require the Rule 31 Neutral to ~~file~~ 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 filed within the time specified in the Order of Reference. In the event the Order of Reference does not specify a deadline, the final report shall be ~~filed~~ submitted within 60 days of the initial meeting with the parties, or within the time period specified by the court.

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

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

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

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

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

(e) Rule 31 Neutrals may assist the parties by serving as a scrivener to record or memorialize the terms of the settlement agreement.

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

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

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

[Amend Section 17 as follows:]

(a) Rule 31 Mediators in General Civil Cases.

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

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

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

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

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

(b) Rule 31 Mediators in Family Cases.

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

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

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

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

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

[Amend Section 18 as follows:]

(b) Annual Renewal of Rule 31 Mediator Status. As a condition of continued listing, each Rule 31 mediator must file an ~~annual report~~ annual renewal form with the AOC Programs Manager attesting that he/she is in good standing with any professional licensing agency or organization, if applicable, and must pay the annual registration fee set by the ADRC. 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.

(c) Inactive Status.

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

[Amend Section 19 as follows:]

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

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

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

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

[end of Appendix]