



# ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

Fall 2017 Volume 17, Issue 4

Conflict Resolution  
Agreement Solutions  
Family Mediation  
General Civil Negotiation  
Tennessee Mediator  
Dispute Rule 31

## TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

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Send questions and comments to:

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### IMPORTANT NEWS

- Deadline for submission of 2018 Renewal Form is 12-31-17. The form and information can be found on the AOC website: <http://www.tncourts.gov/programs/mediation/resources-mediators/policies>
- A list of approved CME courses can be found on p. 3 or: <http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediator-education>.
- To file online mediation reports, go to: <http://www.tncourts.gov/programs/mediation/resources-mediators>. To obtain your username and password, please contact Caitlin Vasser, Programs Assistant, at (615) 741-2687 or by email at [caitlin.vasser@tncourts.gov](mailto:caitlin.vasser@tncourts.gov).

### IMPORTANT ADR DATES

**December 1, 2017** - Rule 31 Mediator Applications Deadline for ADRC review on January 23, 2018  
**December 31, 2018** - 2018 Rule 31 Mediator Renewal Deadline  
**January 23, 2018** - ADR Commission Meeting, AOC Office, Nashville  
**March 2, 2018** - Rule 31 Mediator Applications Deadline for ADRC review on April 24, 2018  
**April 24, 2018** - ADR Commission Meeting, AOC Office, Nashville

### FAST STATS:

The ADRC received mediation reports from 88 of Tennessee's 95 counties for the 3<sup>rd</sup> Quarter of 2017 (July 1 – Sept. 30, 2017). The ADRC encourages Rule 31 Listed Mediators 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 at: <http://www.tncourts.gov/programs/mediation/resources-mediators> in the "Submit Rule 31 Report" section.

### SUMMARY OF ADR OCTOBER 2017 COMMISSION MEETING

During the October 12, 2017 quarterly meeting, the ADR Commission considered 47 new mediator applications and reviewed Committee reports. The meeting focused on discussion of the continued comprehensive review of Rule 31 and proposed revisions.

### NEW COMMISSIONERS:

Welcome to new Commissioners Celeste H. Herbert and Richard Ladd, Jr.!

Ms Herbert is a graduate of the University of TN School of Law and a practicing attorney and Rule 31 listed mediator in the Knoxville area. She is a member of American Bar Association, Tennessee Bar Association, Knoxville Bar Association and the Hamilton Burnett American Inns of Court. She is a Bar Fellow of the TBA Foundation and the Knoxville Bar Foundation. She has served as a Commissioner on the Knoxville Utilities Board since 2013 and is the Chair of the Board for 2017 – 2018. She is also a Hearing Officer for the City of Knoxville Beer Board and the City of Knoxville Civil Service Merit Board, and a Board Member of the YWCA of Knoxville.

Mr. Ladd is an attorney in the Bristol, Tennessee office of PennStuart and concentrates in the areas of medical, legal and professional liability defense, complex litigation, and appellate work. He is a Commissioner on the TN Supreme Court Advisory Commission on the Rules of Practice and Procedure. He has served as a JAG Officer with the United States Navy, and as a Special Assistant United States Attorney. He is a former adjunct professor in the M.B.A. program at King University, and in the Paralegal Studies Department of Virginia Intermont College.

### **We Would Like to Hear From You!**

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*. All 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 article for possible publication in the *ADR News*, please contact the AOC Programs Manager at (615) 741-2687.

# NEWS AND EVENTS

## UPDATED AOC RESOURCES

### Access and Visitation Grant Recipients

The AOC has announced the following recipients of the Access and Visitation Grant (A&V) for FY 2017-2018 (October 1, 2017 – September 30, 2018). Several of the grantees provide mediation services. The grantees providing mediation services are:

#### **23rd District Judicial Advocates, Inc.**

Ashland City, TN 37015  
Phone: (615) 306-6229

This program provides mediation through Rule 31 Listed Mediators and legal assistance through local attorneys in the 23rd Jud. District - Cheatham, Dickson, Houston, Humphreys, and Stewart Counties - for low income and indigent Drug Court participants with parenting/visitation issues.

#### **Nashville Conflict Resolution Center**

Nashville, TN 37211  
Phone: (615) 333-8400

This program provides mediations for low income or indigent self-represented never married parents with child access and visitation issues in juvenile court in Davidson County.

#### **Williamson County Juvenile Court**

Franklin, TN 37064  
Phone: (615) 790-5812

This program provides mediation services and a legal clinic for low income or indigent self-represented never married parents with child access and visitation issues in Juvenile Court in Williamson County.

#### **Community Mediation Services – Clinton**

Clinton, TN 37716  
Phone: (865) 463-6888

This program provides mediations for low income or indigent self-represented never married parents with child access and visitation issues in Juvenile Court in Anderson County.

#### **First Judicial District Court Clinic**

Johnson City, TN 37614  
Phone: (423) 439-7681

This program employs an Access and Visitation Coordinator to provide mediation, information, and practical instruction in the development of and filing of parenting plans for low income and indigent self-represented never married parents with Child Access and Visitation Issues in Juvenile Court.

For information about each A&V program including service area and contact information, please visit <https://www.tncourts.gov/programs/mediation/resources-public> and click on the link for Access and Visitation, under State Funded Mediation Programs.

## CONGRATULATIONS TO THE FOLLOWING NEWLY LISTED RULE 31 MEDIATORS!

**THESE MEDIATORS WERE APPROVED FOR LISTING AT THE ADRC QUARTERLY MEETING ON OCTOBER 12, 2017**

### Family

Mr. William Bell  
Mr. Leon Berrios  
Mr. Jack Bowers  
Ms. Linda Crawford  
Mrs. Donna Green  
Ms. Tara Hinman  
Ms. Sharon Locklear  
Mr. David Matsumoto  
Ms. Montoyia McGowan  
Mr. John Meadows  
Mr. Jason Pearcy  
Ms. Elizabeth Ramsey  
Mr. Aaron Raney  
Mr. Joseph Stapleton  
Ms. Julie Sutter

### General Civil

Ms. Maha Ayesh  
Ms. Maggie Bahou  
Mr. John Barney  
Ms. Sandi Bott  
Mr. Gregory Brown  
Mr. Robert Chapski  
Mr. Lee Clark  
Ms. Sheneka Davis  
Ms. Cassandra Ferguson  
Mr. Jeffrey Gibson  
Mrs. Toni Hawkins  
Mr. Joe Johnson  
Mrs. Sara Oeser  
Ms. Talley Olson  
Mr. Brian Quist  
Mr. William Rieder  
Mr. Ronald Steen  
Ms. Carol Tate  
Ms. Alicia Washington  
Mr. John Whitfield

### General Civil/Family

Mr. Matthew Grosland  
Mr. Jim Martin  
Mr. Travis Lampley  
Mrs. Crystal Morgan\*  
Mrs. Teresa Martin  
Ms. Anita Herron\*  
Ms. Jennifer Paden\*  
Ms. Robin Kimbrough\*  
Ms. Stacy Scruggs

\*Designation as “Specially Trained in Domestic Violence Issues”

## CONTINUING MEDIATION EDUCATION OPPORTUNITIES

| <u>DATE</u>  | <u>Course Name</u>  | <u>Type of Credit</u>  |
|--|---|--|
| <u>AENZI</u>   |   |  |
| Ongoing  | <u>Effectively Mediate with Motivational Interviewing</u>   | 1 Hour General Education <u>or</u> Family Law <u>or</u> Mediation Ethics                                   |
|  | <u>Effectively Mediate Post-Adoption Disputes</u>   | 1 Hour General Education <u>or</u> General Mediation Issues <u>or</u> Family Law                           |
|  | <u>Effectively Mediate with Motivational Interviewing</u>   | 2 Hours Continuing General Education <u>or</u> Mediation Issues  |
|  | <u>Mediate with Emotional Intelligence</u>  | 2 Hours Mediation Ethics   |
|  | <u>What Shape is Your Triangle?</u>   | 2 Hours Mediation Issues   |
|  | <u>Ethical Mediation Course</u>   | 1 Hour Mediation Ethics  |
| <u>FLEMING LAW FIRM</u>                                |   |  |
| 12/7/2017  | <u>Advanced Mediation Techniques-Working thru Impasse</u>   | 3.5 General Mediation Issues; 1 hour Mediation Ethics and 1.5 hours Family Law <u>or</u> General Education |
| <u>KNOXVILLE BAR ASSOCIATION</u>                       |   |  |
| 12/11/2017   | <u>Mediation Practice &amp; Ethics Update 2017</u>  | 1 Hour Mediation Ethics  |
| 11/16/16 - 11/15/17                                    | <u>Techniques to Avoid Impasse</u>  |  |
| 12/20/16 - 12/19/17                                    | <u>Tax Issues In Divorce</u>  |  |
| 4/17/17 – 4/16/18                                      | <u>Mediation – Practice &amp; Ethics Update 2016</u>  |  |
| 10/2/17 - 10/1/18                                      | <u>Inviting the Employer and the Employee to the Table</u>  |  |
| 11/1/17 – 10/31/18                                     | <u>Emerging Ethical Issues in Mediation</u>   |  |
| <u>M. LEE SMITH</u>                                    |   |  |
| 11/30/17 - 12/1/17                                     | <u>12th Annual Family Law Conference</u>  | 10 hour Family Law & 5 General Continuing Education  |
| <u>MEMPHIS BAR ASSOCIATION</u>                         |   |  |
| 11/17/2017   | <u>Nuts &amp; Bolts for Building a Collaborative Practice</u>                                     | 3.25 hours General Education or 2.25 hours General Continuing Education with 1 hour of Family Law          |
| <u>NASHVILLE BAR ASSOCIATION</u>                       |   |  |
| 12/5/2017  | <u>Ethical Issues for the Mediator and the Mediated</u>   | 1 hour General Mediation Ethics  |
| 5/19/17 - 5/18/18                                      | <u>ADR Building Consensus &amp; Managing Emotions at Mediation</u>                                | 1 Hour General Mediation Issues  |
| 5/22/17 – 5/21/18                                      | <u>ADR Ethical Concerns in Family Mediation Cases</u>   | 1 Hour General Mediation Issues <u>or</u> 1 Hour Family Law  |
|  | <u>ADR How to Divide Assets &amp; Could Collaborative Divorce Work for You &amp; Your Clients</u> | 1 Hour Mediation Ethics  |
| <u>NASHVILLE CONFLICT RESOLUTION CENTER</u>            |   |  |
| 11/14/2017   | <u>Transformative Mediation Primer</u>  | 1.25 General Mediation Education   |
| <u>PRIVATE DISPUTE RESOLUTION SYSTEMS</u>              |   |  |
| 12/15/2017   | <u>Ethics in Professional Practice</u>  | 2.25 hour Mediation Ethics & .25 hours General Mediation Issues & .5 hours General Continuing Education    |
| <u>ROSEMARY FRANK FINANCIAL</u>                        |   |  |
| 11/14/16 - 11/13/17                                    | <u>Avoid Financial Pitfalls in Divorce Cases</u>  | 2 Hours Mediation Issues <u>or</u> Family Law  |
| <u>TENNESSEE ASSOCIATION OF PROFESSIONAL MEDIATORS</u> |   |  |
| On Demand  | <u>Mock Mediation of an Employment Dispute</u>  | 1.33 Hours Mediation Issues  |
| <u>TENNESSEE BAR ASSOCIATION</u>                       |   |  |
| 7/18/17 – 7/18/18                                      | <u>Dispute Resolution - Ethics Mediation</u>  | 1 Hour Mediation Ethics  |
| 11/1/17 – 11/1/18                                      | <u>Mediation Ethics</u>   |  |
| 11/21/17 – 12/21/18                                    | <u>Collateral Damage in Mediation Children and Divorce</u>  | 1 General Mediation <u>or</u> Family Law   |
| 11/29/16 - 11/28/17                                    | <u>Mediation in Juvenile Court</u>  | 2 Hours Mediation Ethics <u>or</u> 2 Hours Family Law  |
| 12/1/17 – 12/15/18                                     | <u>Mediation Preparation</u>  | 1.0 General Mediation  |
| <u>TENNESSEE LAW INSTITUTE</u>                         |   |  |
| 11/29/17 - 11/20/17                                    | <u>46th Annual Review Seminar</u>   | Day 1: 6 hours General Education and 1.5 hours Family  |
| 12/12/17 - 12/13/17                                    |   | Day 2: 7 Hours General Education & .5 General Mediation Issues   |
| <u>TENNESSEE MEDIATION SCHOOL</u>                      |   |  |
| 12/14/2017   | <u>End of Year Update 2017 Knoxville</u>  | 1 hour Mediation Ethics & 2 hours Family Law <u>or</u> General Education                                   |
| <u>TRAINING RESOLVED</u>                               |   |  |
| 11/15/17, 11/28/17, 12/6/17, 12/12/17                  | <u>Parent Education Class for Mediators &amp; Lawyers</u>   | 4 hours Family Law <u>or</u> General Education and 1 hour General Med Issues                               |
| Online   | <u>Parent Education Class for Mediators &amp; Lawyers</u>   |  |
| <u>TENNESSEE VALLEY MEDIATION ASSOCIATION</u>          |   |  |
| 11/21/2017   | <u>AOC Opinion Mediators Drafting Docs</u>  | 1 Hour Mediation Ethics  |



## **Reflections on Standards of Mediator Conduct - Rule 31, Appendix A.1(C)**

### **Principle: The Needs and Interests of the Participants**

By Larry W. Bridgesmith, ADRC Commission Member

#### **Needs and Interests of the Participants.**

These reflections follow those of ADRC Commissioner Mary Ann Zaha in the last quarterly newsletter. Of the six important principles identified in Rule 31's ethical guidance contained in Appendix A.1(C), the most elastic is the first: "the needs and interests of the participants".

As a lawyer serving for 40 years, I confess that much of my legal practice has focused on providing My solutions, My ideas, or My expertise. Sometimes "my" perspective prevailed to the exclusion of the needs and interests of the participants involved in proceedings in which I was involved.

#### **Mediation is not Litigation**

Mediation is a process (unlike adversarial proceedings) which seeks to promote mutually satisfying outcomes. Under Rule 31, clients and their representatives are promised a different kind of problem solving environment when they opt for mediation. Mediation's goal is to reach amicable settlements of sometimes complex disputes collaboratively, rather than competitively.

Unless the mediation process serves to promote the "needs and interests" of all the participants, it is merely a substitute for the power tools of litigation and trial in which there are clearly defined winners and losers.

#### **Needs and Interests are not Positions**

Even the concepts underlying the words "needs and interests" evoke a far different level of participant satisfaction than mere competitive pie splitting. Where compromise seeks to agreeably divide the tangible matters in dispute, some satisfaction might be derived. However, meeting needs and interests requires a far more integrative than distributive approach to problem solving.

Unless a mediator knows how to explore and chooses to pursue the participants' needs and interests, something less than Rule 31 mediation results. A golden retriever can carry counter offers back and forth in a shuttle diplomacy exercise. Rule 31 requires skills far more sophisticated.

Rule 31 mediators know the power of the open ended question that surfaces needs and interests of which the parties themselves may not have been cognitively aware. Needs and interests are usually sub-cognitive and must be coaxed out for the parties to understand what obstacles to agreement might be preventing it. Mediators open the doors to resolution by asking the questions that help the participants explore the underlying reasons for the dispute and the varied paths to resolution. Probing the cognitive disconnect presented by the parties' stated desire to settle and their inability to do so requires a non-threatening, non-accusatory use of exploratory questions designed to educate the mediator on the parties' needs and interests. In the process, the parties educate themselves and potential solutions surface.

#### **The Path to Creativity and Innovation**

Promoting needs and interests encourages creativity and empowers innovative problem solving on the part of the parties. Expanding the size of the pie (not simply slicing it) is possible when needs and interests are explored. Many people resort to litigation so "they can be heard" or to bring to light some perceived grievance. Mediation can provide an environment, courts cannot provide when needs and interests are explored. Courts are limited to admissible facts and the application of law. Mediation can provide an airing of the parties' needs and interests at a much deeper level of value.

Among the many disciplines that have begun to influence law and legal problem solving, one bears particular mention. Human Centered Design Thinking (HCDDT or "design thinking") is a mindset which seeks to solve the legal problems of clients from their perspective with the assistance of the legal professional. The foundation of legal ethics as well as mediation ethics (as in Rule 31 Appendix A) is the "voice of the client". Informed consent within the bounds of the law on the part of the participants is the mediator's highest ethical responsibility. Design thinking methods help us provide mediation services with the needs and interests of the participants in the process at a position of high value.

#### **Conclusion**

The drafters of Rule 31 were extraordinarily insightful. By placing the needs and interests of the participants as a number one priority, Rule 31 mediators provide a service like no other professional.