



ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

VOLUME 13, ISSUE 3

SUMMER 2013

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IMPORTANT NEWS

The 11th Annual ADRC Workshop will be held Friday, October 18, 2013 at Lipscomb University in Nashville. If you are unable to attend the program in person, you will be able to attend the program online via live feed from your office or home computer. Please note that the Workshop will *always* satisfy the CME requirements for *BOTH* general civil and family listed mediators. Registration materials will be emailed soon. We look forward to seeing you there!

The Alternative Dispute Resolution filed a Petition with the Supreme Court for the Adoption of Amended Rule 31 on July 15, 2013. Per a Supreme Court Order filed on July 22, 2013, written comments on the proposed amendments must be submitted to the Clerk on or before January 15, 2014. The Order can be found on the AOC's website at: <http://www.tncourts.gov/rules/proposed/>.

The website location for Rule 31 mediation reporting has been changed to a secure link. The new secure link is now: <https://www2.tncourts.gov/ADR/Default.aspx>. If the old website location/ Rule 31 online reporting link of <http://www2.tncourts.gov/ADR/Default.aspx> is currently bookmarked as a "favorite" on your computer, you might receive an error message when accessing this link. If you go through the www.tncourts.gov website each time you file an online report, you will not have a problem.

Mediating Budget Disputes Between Local School Boards and County Commissions in North Carolina: A Model Tennessee Should Consider?

By: Joseph G. Jarret, Esq. © Joseph G. Jarret, Esq.
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The scenario, unfortunately, is not at all uncommon: a Tennessee board of education (BOE) ends up at odds with its counterpart county commission over the BOE's budget. The BOE wants more, the county commission wants to allocate less. Accusations fly, relationships are strained, lawsuits are filed, and the local citizenry suffers. Taxpayer dollars are squandered on rapacious litigation with the education of affected children hanging in the balance. Although the parties to such conflict can agree to submit the dispute to mediation, there exists no formal process in place that either requires or encourages mediation. Consequently, there is little incentive for these warring politicians to seek alternatives to conflicts that are far better suited for the mediator's table than the courtroom. Tennessee's neighbor to the East, however, has elected to take a more proactive approach to such inter-governmental disputes. Recognizing that budget issues can be a constant source of friction between the two bodies, the State of North Carolina took steps to mitigate school board-county commission conflicts by passing ADR-based legislation. This legislation authorizes a local BOE to initiate a dispute resolution process with the county if the BOE determines that in any given year "the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools"¹

There are several stages to this innovative dispute resolution process, including a mandatory meeting of the two boards. This step is the first in getting the principal players to speak to one another. The next step is mediation. If both these steps fail to produce a satisfactory outcome, the BOE retains the recourse to file an action in superior court against the county. The North Carolina model is an expedited one, requiring the parties to initiate the process within a seven-day time period following the county commission's adoption of their budget. If the budget, in the eyes of the BOE, is insufficient, then the chairperson of the BOE and the chairperson of the board of county commissioners are required to arrange a joint meeting of the two boards. A mediator is then selected by mutual assent of the two boards, or appointed by the senior resident superior court judge if the

¹ N.C.Gen.Stat. §115C-431 was amended to provide for an optional, pre-litigation, mediation step if a local board of education believed that the funding allocated to them by the board of county commissioners is insufficient to carry out their legal obligations.

parties cannot agree on a mediator. If, during the course of the joint public meeting, (which is moderated by the mediator) the boards cannot come to a mutually agreed upon resolution, either board may request mediation. The two boards are required to bear equally, the mediator's compensation and expenses.

Unlike the public meeting where all members of both boards may attend, mediation sessions are only attended by "working groups" consisting solely of the chairs of both boards, attorneys for both boards, finance officers of board boards, the county manager, and the school superintendent . Such working groups are invaluable as the meetings are private, and as such, free from media and public scrutiny, thus assuring confidentiality and candid discourse. Further, evidence of statements made, and conduct occurring in mediation, are not subject to discovery nor are they admissible in any court action. Although, like Tennessee, the mediator may not disclose any information about the mediation, it is interesting to note that she or he may not make any recommendations or statements of findings or conclusions during and after the mediation process.

As with most conflicts between two different but coexisting bodies politic, most sources of conflict are to be traced back to a lack of communication. Interestingly, the North Carolina General Statutes specifically address the issue of poor communication by providing in pertinent part: "In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year."²

In their study of North Carolina counties that availed themselves of budget resolution ADR, Coplin & Stephens (2004),³ noted increased and enhanced communications between the two boards. In one mediated agreement, the bodies formed a task force in an effort to forge a better working relationship. In another, the bodies agreed to have ongoing, regularly scheduled post-mediation meetings. (Coplin & Stephens (2004, 16, 17).

Because lack of communication between BOEs and county commissions is not unique to North Carolina, Tennessee may benefit greatly from the introduction of mediation into budget conflicts. Although it can be argued that Tennessee's county commissions lack the discretion North Carolina counties have when it comes to school funding as a result of Tennessee's "maintenance of effort"⁴

² N.C. Gen. Stat. §115C-426.2 promotes joint planning by the two boards in the following language: In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article.

³ Coplin, Stephanie and Stephen, John. (2004). *School Budget Mediation Three Cases from 2004*, published by School of Government, University of North Carolina at Chapel Hill.

⁴ T.C.A. § 49-2-203 and § 49-3-314, known as the "maintenance of effort laws" prohibit reductions in local funding for education from one year to the next unless student enrollments are down.

laws, nevertheless, conflicts, budget and otherwise, continue to challenge local government leaders throughout the state. Of course, such an innovative program would require the Tennessee Legislature to think outside of the proverbial box, if not asymmetrically. It would, at a minimum, require an exception to the Tennessee Open Government Act (colloquially known as the “Sunshine Law”), which presently does not permit two or more members of the same public body, intent on deliberating, to meet in private.⁵ The fact that the State of North Carolina has taken such a bold step towards recognizing the value of ADR, especially when it comes to something as vital as the education of our children, is encouraging indeed. If there was ever an arena of potential conflict that is ripe for mediation, it is the conflicts between Tennessee’s local government entities. The same can be said of Tennessee’s arcane salary suit system. Presently, certain local government officials, such as the Trustee, Sheriff, etc., in order to insure proper funding for the office in questions, may file a salary suit, which is an adversary proceeding between office holder and the county executive. Although Tennessee law permits the parties to enter into letters of agreement in lieu of salary suites, the latter seems to be the most popular vehicle by which such disputes are settled. Perhaps it’s time we learned a lesson or two from our neighbors to the East. By passing legislation that brings school boards, county commissions, county executives and other offices holders to the mediation table, taxpayer dollars can be saved, and perhaps the people’s faith, trust, and confidence in local governance in Tennessee, restored.

About the Author

**Joseph G. Jarret is a Rule 31 Listed General Civil Mediator, a Federal Mediator and an Attorney who lectures full-time for the University of Tennessee, Graduate School of Public Policy and Administration. A former active duty United States Army Combat Arms Officer and Air Force Special Agent, Joe Jarret is an award-winning writer who has published over 85 articles in various professional journals. He is a past-president of the Tennessee Valley Mediation Association, has served as a board member for the Tennessee Association of Professional Mediators, and is a member of the Tennessee Bar Association, and the ADR Section of the Knoxville Bar Association. He holds the juris doctorate degree, the masters in public administration degree and a bachelors degree and is pursuing the Ph.D. in educational leadership. He can be reached at:*

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⁵ T.C.A. § 8-44-101 – 201, *Chapter 44, Public Meetings*, provides in pertinent part: “The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.”

~Roll Call~

Congratulations to the following Newly Listed Rule 31 Mediators! These mediators were approved for listing at the ADRC Quarterly Meeting on July 23, 2013.

Mr. Kenneth C. Amato	General Civil	Mr. Andrew D. Kitzmiller	Family
Mr. Stephen T. Bobo	General Civil	Ms. Claudetta S. McMurtry	General Civil
Mr. Ervin D. Brown	General Civil	Mr. Michael B. Menefee	Family
Mr. Joseph D. Byrd	General Civil	Ms. Laura E. Metcalf	General Civil
Ms. Yvette Y. Cain	Family	Mr. Robert D. Meyers	General Civil
Rev. Bobby L. Deberry	Family	Ms. Venus B. Niner	Family
Ms. Nancy D. Denning-Martin	Family	Mrs. Nekishia N. Potter	General Civil
Rev. Janet Edwards	Family	Mrs. Jennifer R. Predmore	Family
Mr. Daniel R. Goodge	General Civil	Mrs. Whitney H. Raque	Family
Ms. Carolyn D. Greenwood	General Civil/Family	Ms. Amber N. Reece	Family
Ms. Dana A. Hampton	Family	Mr. Daniel M. Schaffzin	General Civil
Mr. Chadwick J. Hayes	Family/DV	Mr. Timothy B. Sullivan	General Civil
Ms. Judith A. Hedge	General Civil/Family/DV	Mr. James C. Walker	General Civil
Mr. Charles A. Hill	Family	Mr. Daniel H. Webb	General Civil
Mr. Richard E. Hopson	Family	Mr. Christopher C. Whitson	General Civil
Ms. Connie Johnson	General Civil	Ms. Ann M. Wogan	Family

National ADR Expert Slated as Keynote Speaker at Nov. 21-22 ABA Mediation Institute in Nashville

[Professor Dwight Golann](#) will be the keynote speaker at the ABA Section of Dispute Resolution's Advanced Mediation and Advocacy Skills Institute in Nashville, TN. Using video excerpts of attorneys strategizing with clients and bargaining with mediators, Golann will discuss how lawyers work to influence neutrals. Golann, a professor at Suffolk University Law School in Boston, is the author most recently of *Sharing a Mediator's Powers: Effective Advocacy in Settlement* (ABA Publishing, 2013). He has taught dispute resolution widely across North America, Europe and China and his works on mediation have been translated into multiple languages.

Save the date: The two day Institute is Nov. 21-22, 2013 at the Omni Hotel, Nashville TN.

For more information and to register, visit: www.americanbar.org/dispute (click on link under Upcoming Events in right column). The Tennessee Alternative Dispute Resolution Commission is one of the co-sponsors of the Institute, enabling our members to receive the discounted "early bird" registration (early bird registration fee is \$795).



Important ADRC Dates

- September 3, 2013** Rule 31 Mediator Applications Deadline for ADRC review on October 17, 2013
- October 17, 2013** ADR Commission Meeting, Lipscomb University, Nashville
- October 18, 2013** ADRC Mediation Workshop, Lipscomb University, Nashville
- November 21-22, 2013** ABA Advanced Mediation and Advocacy Skills Institute, Omni Hotel, Nashville

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 for publication 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 publication in the *ADR News*, please contact Claudia Lewis, AOC Programs Manager, at Claudia.Lewis@tncourts.gov.