

**ALTERNATIVE DISPUTE RESOLUTION PLAN
TO ADDRESS CASE BACKLOGS
RELATED TO THE COVID-19 PANDEMIC**

SECTION 1. INTRODUCTION

1.1 Title.

This is a Plan for Alternative Dispute Resolution in Tennessee courts (“the ADR Plan”) in response to the Covid-19 pandemic and its impact on court cases.

1.2 Purpose and Scope.

- (a) Purpose. The Tennessee Supreme Court approved the ADR Plan to assist in reducing the backlog of civil cases in the State’s judicial system caused by the COVID-19 pandemic. The specific goal of the ADR Plan is to make available to civil litigants the alternative dispute resolution procedure of mediation as a means of providing a quicker, less expensive and potentially more satisfying alternative to continuing litigation, but without impairing the quality of justice or the right to trial.
- (b) Scope. The ADR Plan applies to all pending civil actions in general sessions courts, juvenile courts, chancery courts, and circuit courts.

SECTION 2. REFERRAL TO MEDIATION

- (a) Backlog of Cases. Trial judges are encouraged to refer cases to mediation, but referral is solely in the discretion of trial judges. A trial judge may request that the parties utilize the services of a mediator, issue an Order referring the case to mediation, or decide not to refer a case to mediation.
- (b) Selection of Cases. Priority shall be given to cases in which all parties are *pro se* (proceeding without legal representation) or a party is *pro se* and the other party or parties are represented by an attorney. A trial judge may also refer cases to mediation when all parties have attorney representation.

SECTION 3. MEDIATORS

- (a) Mediators. Trial judges may utilize the services of community mediation centers in the three grand divisions: Mid-South Community Justice & Mediation Center

in Memphis, the Nashville Conflict Resolution Center in Nashville, and the Community Mediation Center of Knoxville in Knoxville.

- (b) Qualification of Mediators. A mediation center mediator conducting mediations under the ADR Plan shall be a Rule 31 Listed Mediator currently in good standing with the Alternative Dispute Resolution Commission.
- (c) Change of Mediators. If the mediation center selects a mediator and one or more parties object to the mediator selected, the mediation center shall provide another mediator.
- (d) Private Mediator. The parties may retain the right to select by agreement a Rule 31 Listed Mediator.

SECTION 4. MEDIATION PROCESS

- (a) Informal process. A Rule 31 mediation is an informal process in which a Rule 31 Listed Mediator conducts discussions among the parties designed to enable them to reach a mutually acceptable agreement on all or any part of disputed issues. The mediator has no decision-making authority, but will facilitate the parties' negotiation leaving the rights of self-determination to the parties.
- (b) Compliance with Rule 31. All persons serving as mediators in the ADR Plan will conduct mediation in accordance with Tennessee Supreme Court Rule 31 and will be entitled to all of the immunities and protections provided by Rule 31.

SECTION 5. CONFIDENTIALITY IN MEDIATION

- (a) Mediation is Confidential and Private. No participant in the mediation process or any portion thereof may communicate confidential information acquired in mediation without the consent of the disclosing party. There shall be no stenographic or electronic recording, audio or visual, of the mediation process.
- (b) Communication with the Mediator. Once the mediator is assigned, the mediator may, at his or her discretion, discuss the case in confidence and *ex parte* with counsel or representatives of the parties. The mediator shall not disclose any confidential communication obtained from a party or counsel in any *ex parte* session without the express consent of the other party or parties and their counsel.

SECTION 6. COMPENSATION OF MEDIATORS

- (a) Mediation under the ADR Plan will be provided at no cost to indigent pro se parties. In cases where parties are represented by counsel, the matter of mediator compensation will be as agreed upon by the parties or as ordered by the trial judge.

SECTION 7. PROCEDURE FOR NOTIFYING PARTIES EITHER BY ORDER OR BY REQUEST

- (a) A trial judge shall select appropriate cases for mediation.
- (b) When a trial judge requests parties to participate in mediation, the parties shall be notified by letter or email that a referral has been made and recommend that the parties contact the assigned mediation center. (Exhibit A)
- (c) When a trial judge orders mediation, the trial court shall provide the parties by letter or email with a mediation order. (Exhibit B)
- (d) Upon referral or order, the trial court shall provide the assigned mediation center by letter or email copies of the trial court's notice letter to the parties, any applicable mediation order, the civil warrant or complaint, and any other necessary pleadings which should include the parties' contact information. (Assigned listings attached as Exhibit C)

SECTION 8. MEDIATION CENTER'S COMMUNICATION WITH PARTIES

- (a) After a referral is made, the assigned mediation center shall notify the parties by letter or email of the opportunity to utilize the mediation center's mediation services. After a mediation order is entered, the mediation center will proceed with the assignment of a mediator and notification of the parties by letter or email.

SECTION 9. HOW CONDUCTED

- (a) All mediations will be conducted virtually, that is by use of an audio and video conferencing platform or by telephone, unless otherwise agreed upon by the parties and the mediator.

SECTION 10. EVALUATION

- (a) The confidentiality of information disclosed during mediation does not prohibit or limit: (1) the trial court or mediation center from collecting information for the purpose of evaluating the ADR Plan; (2) the mediator filing a Mediator Report advising the Court of the outcome consistent with the provisions of Rule 31 of the Tennessee Supreme Court.

- (b) Information collected by the trial court or the mediation center for the purpose of evaluating the ADR Plan will be used for research and monitoring purposes only. The sources of specific information concerning the communications protected by the confidentiality provisions of Rule 31 will not be disclosed to the trial court or in any report.

EXHIBIT A

Court Mediation Letter

[Sent on court letterhead to pro se litigants]

RE: _____

Greetings:

The Tennessee Supreme Court has a new program to allow judges to use a tool called mediation to help you solve your case. Contact a Mediation Center to learn more about how mediation can help you. The Mediation Center will answer your questions about the program.

[Insert Mediation Center contact information]

Here is some information you should know about mediation:

- Mediation is an alternative to court. Mediation is an informal and private meeting. You and the other party will be able to talk about possible solutions to your case.
- A trained mediator will lead the mediation meeting. The mediator will help you and the other party see if it is possible to resolve the problem without going to court.
- The mediator can't make any decisions. The mediator can help you and the other party discuss the problem and agree on a solution.
- You don't have to do the mediation in-person. Mediation can be held remotely over the phone, by email, or by video. This means the mediation can happen at a time that works for you and the other party. This means you won't have any travel costs or have to miss work to go to mediation. This also helps prevent the spread of COVID 19.
- You and the other party may be able to reach an agreement faster in mediation than if you go to court. The COVID-19 pandemic is causing the waiting period for courts to hear cases to be longer than normal. Judges and court staff have to comply with CDC guidelines and other rules. Sometimes this means cases are delayed.

You and the other party can agree to try mediation to solve your problem. The Mediation Center can assign a mediator. Or you and the other party can choose a trained mediator then ask the Court to assign that mediator. The list of trained mediators is online at <http://www.tncourts.gov/programs/mediation/find-mediator>.

Mediation is confidential. No information that you share in mediation will be shared with the judge. The mediator will not communicate any information to the judge. The mediator will only report whether or not mediation was successful.

You should also know the following:

- If you decide you do not want to mediate your case you still have the option to go to court. If you start mediation but decide to stop before it ends, you still have the option to go to court.
- Cases that don't use mediation or cases that aren't resolved in mediation will be heard by this Court when a court date is available.

Contact the Mediation Center identified above for more information.

Thank you in advance for learning more about mediation as a possible way of solving your case.

EXHIBIT B

Order to Conduct Mediation

IN THE _____ COURT OF
_____ TENNESSEE

Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

ORDER TO CONDUCT MEDIATION

This Court finds that this matter is appropriate for mediation under Tennessee Supreme Court Rule 31 and the ADR Plan approved by the Tennessee Supreme Court. Therefore, within thirty days of entry of this Order, the parties are directed to either mutually agree upon a Rule 31 Listed Mediator to conduct the mediation or contact the following community mediation center for assignment of a mediator: _____.

Within seven days of the completion of mediation, the Mediator shall provide a Mediator Report to the Court stating: (1) the name of the Mediator; (2) the date on which the mediation occurred; and (3) whether the matter was settled or not settled.

IT IS SO ORDERED on this ___ day of _____, 20__.

JUDGE

_____ COURT

DIVISION _____

DATE: _____

EXHIBIT C

Judicial Districts by Grand Division

JUDICIAL DISTRICTS

EAST

Judicial District 1: Carter, Johnson, Unicoi and Washington counties

Judicial District 2: Sullivan County

Judicial District 3: Greene, Hamblen, Hancock and Hawkins counties

Judicial District 4: Cocke, Grainger, Jefferson and Sevier counties

Judicial District 5: Blount County

Judicial District 6: Knox County

Judicial District 7: Anderson County

Judicial District 8: Campbell, Claiborne, Scott and Union counties

Judicial District 9: Loudon, Meigs, Morgan and Roane counties

Judicial District 10: Bradley, McMinn, Monroe and Polk counties

Judicial District 11: Hamilton County

Judicial District 12: Bledsoe, , Marion, Rhea counties

Judicial District 13: Cumberland

COMMUNITY MEDIATION CENTER

Community Mediation Center

912 S. Gay Street, Suite L-300

Knoxville, TN 37902

865-594-1879

info@2mediate.org

JUDICIAL DISTRICTS

MIDDLE

Judicial District 8: Fentress

Judicial District 12: Franklin, Grundy, Sequatchie

Judicial District 13: Clay, DeKalb, Overton, Pickett, Putnam and White counties

Judicial District 14: Coffee County

Judicial District 15: Jackson, Macon, Smith, Trousdale and Wilson counties

Judicial District 16: Cannon and Rutherford counties

Judicial District 17: Bedford, Lincoln, Marshall and Moore counties

Judicial District 18: Sumner County

Judicial District 19: Montgomery and Robertson counties

Judicial District 20: Davidson County

Judicial District 21: Hickman, Lewis, Perry and Williamson counties

Judicial District 22: Giles, Lawrence, Maury and Wayne counties

Judicial District 23: Cheatham, Dickson, Houston, Humphreys, and Stewart counties

Judicial District 31: Van Buren and Warren counties

COMMUNITY MEDIATION CENTER

Nashville Conflict Resolution Center

4732 W Longdale Drive

Nashville, TN 37211

615.333.8400

info@nashvilleconflict.org

JUDICIAL DISTRICTS

WESTERN

Judicial District 24: Benton, Carroll, Decatur, Hardin and Henry counties

Judicial District 25: Fayette, Hardeman, Lauderdale, McNairy and Tipton counties

Judicial District 26: Chester, Henderson and Madison counties

Judicial District 27: Obion and Weakley counties

Judicial District 28: Crockett, Gibson and Haywood counties

Judicial District 29: Dyer and Lake counties

Judicial District 30: Shelby County

COMMUNITY MEDIATION CENTER

Mid-South Community Justice & Mediation Center, Inc.

262 German Oak Drive

Memphis, Tennessee 38018

Telephone: (901) 431-5660

info@cjammediation.org