

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2024-0001

The Alternative Dispute Resolution Commission received a request for an advisory opinion from a Tennessee Rule 31 Listed Mediator. The request has been modified for purposes of response within the context of Rule 31. The Ethics Advisory Opinion Committee, consisting of Floyd Flippin, Cindy Ettingoff and Jeffrey Ward, reviewed the request and issued the following opinion.

Inquiry:

- 1. What are the ethical obligations of an attorney in the context of a mediation agreement and subsequent legal proceedings that contradict the mediation outcome?*
- 2. How should the committee interpret the confidentiality provisions of Rule 31 in light of Company A's Attorney's actions?*
- 3. What actions can the committee recommend to address any potential ethical violations that may have occurred?*

Background Information:

In a recent Rule 31 mediation, Company A reached a settlement with Company B and Company C, where they had sued for damages for \$140,000 wherein a mediator's report confirmed that all claims were settled. Following this mediation, Attorney for Company A, filed a separate lawsuit against IP individually, claiming that not all claims were settled and seeking \$45,000 in damages.

The issues that arise from this situation are as follows:

- 1. Misrepresentation of Settlement Status:** Company A's Attorney signed a dismissal acknowledging that all claims were settled, yet he subsequently initiated litigation suggesting otherwise. This raises questions about the ethical implications of his conduct.
- 2. Confidentiality of Mediation:** Given that Rule 31 mediations are confidential, Company A's Attorney's actions in pursuing claims that reference the outcomes of the mediation may violate confidentiality principles inherent in the mediation process
- 3. Potential Improper Purpose:** The initiation of litigation post-mediation could be construed as an improper use of the judicial process, potentially undermining the integrity of the mediation framework.

Response:

1. Tennessee Supreme Court Rule 31 standards and procedures apply only to Rule 31 Mediations and Rule 31 Mediators. The Commission lacks authority to opine as to an attorney's actions during a Rule 31 mediation.
2. The inquiry does not seek an opinion as to a Rule 31 mediator's duty to maintain confidentiality during the mediation. As to an attorney's actions related to Rule 31, the Commission lacks authority to opine as to any attorney's actions related to a Rule 31 mediation.
3. The inquiry does not raise Rule 31 ethical issues committed by a Rule 31 Mediator, and the Commission lacks authority to opine as to any attorney's actions related to a Rule 31 mediation.
4. The Committee would submit Rule 31 does not prevent parties in a situation as presented from agreeing to follow or incorporating the language of Rule 31 when the mediation is not conducted pursuant to Rule 31.

References:

Rule 31, Section 1 - Application

The standards and procedures adopted under this Rule apply only to Rule 31 Mediations and Rule 31 Mediators serving pursuant to this Rule. The standards and procedures do not affect or address the general practice of mediation or alternative dispute resolution in the private sector outside the ambit of Rule 31. Pursuant to the provisions of this Rule, a Court may order the parties in an Eligible Civil Action, as defined in Section 2(f), to participate in a Rule 31 Mediation.

Rule 31, Section 9 Subsection 1

The Ethics Advisory Opinion Committee ("the Committee") shall provide written advisory opinions to Rule 31 Mediators and alternative dispute resolution organizations in response to ethical questions arising from Rule 31 and the Standards of Professional Conduct for Covered Neutrals.


Date Issued: May 8, 2025

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Floyd Flippin

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Cindy Ettingoff

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Jeffrey Ward

