



ADR

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New Reporting Website

The Administrative Office of the Courts launched its new website on May 9th. You may access the site at the same web address, www.tncourts.gov. However, the link for submitting a Rule 31 report has changed. The new link is <http://www2.tncourts.gov/Rule31Report.htm> or follow the steps below.

1. Go to AOC website, <http://www.tncourts.gov/>
2. Select "**Programs**" in the red bar across the top of the page, then select "**Mediation**" from the dropdown menu
3. Click on "**Resources for Mediators**" on the left side of the *Mediation* page
4. Select '**Submit Rule 31 Report**' in the right column of the page. The log-in box should pop up immediately.

If you have any issues locating the site, contact Catherine Homra at 615-741-2687 or Catherine.Homra@tncourts.gov.

If you need your username and/or password, email Sue Ann Olson at Sue-Ann.Olson@tncourts.gov. Please include your fax number in the email request.

Odd Person Out: The Challenge of Third Parties NOT present at the Mediation Table

*by Joseph G. Jarret**

The Challenge:

The savvy mediator knows all too well that prospects for resolving a conflict decline precipitously if the people at the mediation table don't fully represent the constituencies or groups that they are supposed to represent, or lack the decision-making authority necessary to assure closure. No less frustrating are those situations when, during the course of a mediation, it is abundantly obvious to the mediator that one or both of the parties is being influenced by persons not physically present at the negotiation table. These third parties, many of whom have an interest in, but are physically external to, the mediation process, provide unique challenges for today's mediator.

At the outset it must be conceded that there are many instances when, at the outset of the mediation session, the parties freely disclose the presence of such influential third parties. Many of the aforementioned are brought into the mediation session via telephone conference call, or by other media such as e-mail, text messages, etc. Such scenarios are not uncommon when dealing with certain insurance companies or other corporate entities, not to mention some bodies politic. Regarding the latter, it is common practice for many Tennessee local government entities to be represented at the mediation table by someone who can merely recommend settlement to a body politic as compared to being in possession with full settlement authority. However, it is those scenarios when neither party reveals to the mediator or to one another that there exists critical decision-makers who aren't at the meditation table (yet insist have a profound influence on the negotiations) that provide the mediator with one of her biggest challenges. Some mediators refer to such absent decision-makers as "ghost parties." Regardless of the term used, or regardless of whether the absent decision-makers are the constituents of a body politic, shareholders in a corporation, or family members, both their absence and influence can greatly impede the parties' ability to reach an mutually agreed-upon resolution.

It is important to note that, merely because there exists absent third parties who can influence the mediation process does not necessarily mean that a party is acting in bad faith. Some disputes are so contentious that the parties find it difficult to act civil in the presence of one another. Many mediating parties go through mental check lists of sorts, prior to the mediation session, asking such questions as:

- Who can help or hurt our goals at mediation?
- Who should be at the mediation table,? and equally as important,
- Who should not be at the table and why?

Possible Solutions:

Based upon the above, the mediator may want to consider exploring the existence of absent third parties prior to the mediation. This can be accomplished thorough written, confidential mediation statements the parties are asked to complete, or through telephone or personal contact with each party individually. If neither option is available, the mediator should consider inquiring of the parties in caucus

whether there exists influential people external to the process. To be sure, experience teaches us that, depending on the nature of the case to be mediated, and the relationship of the mediating parties, it may be beneficial *not* to have certain decision-makers or interested parties at the mediation table. This doesn't mean, however, that the mediator should not attempt to engage them while in caucus, or, if appropriate, during the joint session with the permission of the party or parties.

Summary:

The presence of third parties external to the mediation process need not serve as a stumbling block to conflict resolution. It merely takes a bit of concerted inquiry on the part of the mediator to identify those parties and determine how best their existence can be used to resolve the conflict at hand.

**Joseph G. Jarret is a Federal Mediator, Arbitrator and Rule 31 listed general civil mediator and an attorney serving Knox County as its Law Director. He has lectured across the country on various mediation issues and is the 2009-2010 President of the Tennessee Valley Mediation Association, and a member of the Tennessee Association of Professional Mediators, the Tennessee Bar Association, and the ADR Section of the Knoxville Bar Association. Mr. Jarret is also an award-winning writer who has published over 85 articles in various professional journals and a former active duty United States Army Armored Cavalry Officer and Air Force Special Agent with service overseas. He holds the juris doctorate degree, the masters in public administration degree, a bachelors degree, and a post-graduate certificate in public management. Joe Jarret can be reached at joe.jarret@knoxcounty.org.*

Important ADRC Dates

- June 8, 2011** _____ Rule 31 Mediator Applications Deadline for ADRC review on July 26, 2011
- July 26, 2011** _____ ADR Commission Meeting, Administrative Office of the Courts, Nashville
- September 9, 2011** _____ Rule 31 Mediator Applications Deadline for ADRC review on October 25, 2011
- October 21, 2011** _____ Annual ADRC Training, Lipscomb University
- October 25, 2011** _____ ADR Commission Meeting, Administrative Office of the Courts, Nashville

We Would Like to Hear From You!

The Administrative Office of the Courts gladly accepts articles from ADR professionals for publication in the *ADR News*. For more information, please contact Catherine Homra at Catherine.Homra@tncourts.gov.