



ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

VOLUME 14, ISSUE 1

WINTER 2014

Contacts

Tennessee Alternative Dispute Resolution Commission

- Howard H. Vogel, Esq.
Chairperson, Knoxville
- Allen S. Blair, Esq.
Memphis
- Linda Nettles Harris, Esq.
Memphis
- J. Wallace Harvill, Esq.
Centerville
- Tommy Lee Hulse
Kingsport
- Hayden D. Lait, Esq.
Memphis
- C. Suzanne Landers, Esq.
Memphis
- D. Tracy Shaw, Esq.
Nashville
- D. Bruce Shine, Esq.
Kingsport
- Virginia Lee Story, Esq.
Franklin
- Mary Ann Zaha
Chattanooga

Supreme Court Liaison

- Justice Sharon G. Lee

Programs Manager

- Claudia M. Lewis, Esq.

Programs Assistant

- Sue Ann Olson

Send questions and comments to: Tennessee ADR Commission

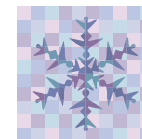
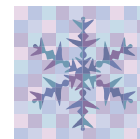
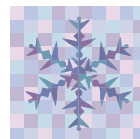
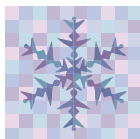
Administrative Office of the Courts
Nashville City Center, Suite 600
511 Union Street
Nashville, TN 37219-1768
Phone: 615-741-2687
Fax: 615-741-6285

Email: Claudia.Lewis@tncourts.gov

Web: www.tncourts.gov

IMPORTANT NEWS

Howard H. Vogel is the new Chairperson of the Alternative Dispute Resolution Commission, succeeding D. Bruce Shine, who has been the Chairperson for the last two years. Mr. Vogel has been a member of the Alternative Dispute Resolution Commission since 2002 and was appointed to a two year term as Chairperson by Order of the Tennessee Supreme Court. Mr. Vogel's appointment runs from January 9, 2014 - January 9, 2016. Mr. Vogel is an attorney and Rule 31 Listed General Civil Mediator in Knoxville, Tennessee.



Virginia Lee Story, an attorney and Rule 31 listed family mediator in Franklin, has been appointed by the Tennessee Supreme Court to replace Edward P. Silva, whose term expired on January 9, 2014, on the ADR Commission.

Mary Ann Zaha, a mediator and Rule 31 listed general civil and family/*DV mediator in Chattanooga, has been appointed by the Tennessee Supreme Court to replace Glenna M. Ramer, whose term expired on January 9, 2014, on the ADR Commission.

Mutts and Mediation: When a Party Brings a Dog to the Mediation Session

By: Joseph G. Jarret, Esq.

"If a dog will not come to you after having looked you in the face, you should go home and examine your conscience."

— Woodrow Wilson

It was when a mediating party to a matter in which I was serving as mediator brought a large, aggressive, undisciplined dog to my office that I knew it was time to amend the "reasonable accommodation" section of my standard "Agreement to Mediate" form. Since then, I've made it a point to inquire of the parties or their attorneys whether a dog was going to be in our midst, as well as whether the animal was a service dog or a therapy dog?

A Dog by any other Name:

It is important to note that, while the presence of dogs in a mediation session is generally not the stuff of the various state rules that govern the mediation profession, federal law does draw a distinction between service dogs and therapy dogs. While service dogs are covered under the Americans with Disabilities Act of 1990 (ADA)¹ therapy dogs are not. A therapy dog is most commonly defined as a dog trained to provide comfort, affection and entertainment to people in nursing homes, hospitals, prisons, schools and retirement homes. According to the ADA, dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under federal law. Service dogs, on the other hand, are covered under the ADA and are defined as "dogs that are individually trained to do work or perform tasks for people with disabilities."² Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. Consequently, the work or task a dog has been trained to provide must be directly related to the person's disability.³

The Dog in Session:

It has been my experience that the presence of a service dog to assist a hearing or seeing impaired person does not give a party on the other side of the mediation table much pause as can a therapy dog whose presence is solely to provide comfort or emotional support. Although there exists a substantial amount of amount of research indicating that the mere presence of a dog in a stressful environment can reap positive emotional and psychological benefits,⁴ not everyone is a fan of our four-footed friends. Some parties and their attorneys will object to a dog's presence merely because some people may have allergies to animal dander, others may have religious or cultural objections to having to work in close proximity with dogs and still others may merely be afraid of dogs.⁵ Further, unlike service dogs who are tethered to the person they accompany, therapy dogs are often tethered to a third party handler, giving rise to objections that a non-party is present at, and could in part influence, the mediation session or the mediating party relying upon the dog for emotional support.

Overcoming Objections:

Needless to say, it is important to inform the all concerned that a dog will be present at mediation as well as the role the dog will play. This can give the parties who will not appear with a dog a chance to voice their objections or requests for their own reasonable accommodations, such as avoiding joint sessions lest a person with a phobia or allergy come in contact with the dog. Further, the party who is bringing the dog should be required to, when possible, adhere to the decorum that judges require when dogs are permitted in the courtroom. Specifically, the dog should be quiet and unobtrusive, be able to sit or lie down beside the party for an extended period of time and not engage in any behavior that would detract from the mediation process. Obviously, it is important to remember that, like people, dogs likewise need a break now and again, as well as food, and water.

Summary:

In summary, because it is not uncommon for a mediating party to seek a validation of her or his feelings, a dog can fulfill this need simply by its presence and ability to offer unqualified attention and acceptance.⁶ It is up the mediator to fully inform the parties of a dog's presence, discuss in advance the required decorum as well as the dog's purpose, and to insure a third party handler who is not a party to the mediation understand and appreciate the rules of confidentiality. In so doing, the mediator can go a long way in insuring the dog is an asset and not a distraction.

¹ Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000).

² *Id.*

³ *Id.*

⁴ Take Two Schnauzers and Call Me In The Morning, Psychol. Today, July-Aug. 1996, at 19.

⁵ See Coren, Stanley, Ph.D., 2012, "Canine Corner The human-animal bond." *Psychology Today*.

⁶ See Bill Barol, Listen Spot: A Therapy Dog can be a Shy Reader's Best Friend, Time Magazine, 1999 at p.14 and Leaser, A. (2005). See Spot Mediate; Utilizing the Emotional and Psychological Benefits of Dog Therapy in Victim-Offender Mediation. *Ohio St. J. on Disp. Resol.*, 20, 943.

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 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 bachelor's degree and is pursuing the Ph.D. in educational leadership. He can be reached at: jgjlaw1@gmail.com.*

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2014-0001

The Alternative Dispute Resolution Commission received a request from a mediator for an advisory opinion, regarding various issues relating to the scope of Rule 31. The Ethics Advisory Opinion Committee, consisting of Linda Nettles Harris, Virginia Story, Howard H. Vogel and Tracy Shaw, Chair of the Committee, reviewed the request and issued the following opinion:

The questions posed were:

1. Does Rule 31 use of the phrase “licensed attorneys” mean State of Tennessee licensed attorneys only?
2. Does Rule 31 use of the phrase “any lawyer in good standing” mean any State of Tennessee licensed lawyer in good standing only?
3. Does Rule 31 allow the parties to the mediation or arbitration to waive the requirements for a licensed attorney or licensed lawyer in good standing?
4. In non-ADR proceedings, including the general and private practice of alternative dispute resolution, may mediations and arbitrations be conducted by individuals who are not attorneys licensed by the State of Tennessee?

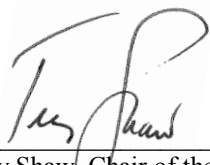
For response to the first question, Section 1 of TSC Rule 31 provides, that Rule 31 does not affect or address the general practice of ADR in the private sector outside the ambit of Rule 31. Rule 31 applies to eligible civil actions, conducted by a Rule 31 mediator. Relating to mediations, any mediation conducted by a Rule 31 mediator is considered to be an ADR Proceeding, and therefore, covered by the provisions of Rule 31. See Section 2(n). A licensed attorney from a jurisdiction, other than Tennessee, may qualify to become a Rule 31 approved mediator per Section 17(a)(2).

For response to the second question, pursuant to the provisions of Section 17(a)(2), the lawyer applicant for Rule 31 approval by the ADRC, must be in good standing in all states in which she or he is licensed.

For response to the third question, it is not necessary to be a licensed attorney to be a Rule 31 mediator. The parties may select a non-Rule 31 mediator, if they choose to do so. As for arbitrations, Rule 31 relates to non-binding arbitrations, which is a defined phrase in Rule 31, Section 2(l). A Rule 31 non-binding arbitration would be conducted by a Rule 31 neutral, and Rule 31, Section 2(p) provides that such persons are required to be licensed attorneys. A binding arbitration and correspondingly, arbitrators, who do binding arbitrations, are not within the purview of Rule 31. Tennessee has adopted the *Uniform Arbitration Act at Tennessee Code Annotated Section 29-5-301 et seq.*

In response to the fourth question, it is noted that the question uses the phrase “ADR Proceedings”, which is a defined phrase at Rule 31, Section 2(n). Matters outside of this definition are not within the purview of Rule 31. Therefore, they would be non-Rule 31 matters. The subject of mediation is addressed outside of Rule 31, but within the *Tennessee Code Annotated*. An example of this is in the area of domestic relations cases. See *T.C.A. § 36-4-130; §16-20-103; §63-1-138*, for a few examples. The response to the third question would relate to this one as well.

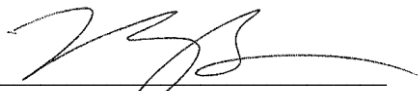
Date: January 28, 2014



Tracy Shaw, Chair of the TARDC Ethics Advisory Opinion Committee



Linda Nettles Harris



Virginia Story



Howard H. Vogel

~ Roll Call ~

Congratulations to the following Newly Listed Rule 31 Mediators!
These mediators were approved for listing at the ADRC Quarterly Meeting on January 28, 2014.

Ms. Tusca R.S. Alexis, General Civil/Family
 Ms. Adrienne L. Anderson, General Civil
 Mr. Bruce L. Beverly, Family
 Mrs. Pamela Warnock Blair, General Civil/Family
 Ms. Danese G. Blankenship, General Civil
 Mrs. Tonda L. Brooks, Family/DV
 Mr. John B. Burgess, General Civil
 Ms. Sheila D. J. Calloway, General Civil
 Mr. Steven B. Crain, General Civil
 Mrs. Scarlet D. Davis, General Civil
 Ms. Susan B. Fentress, General Civil
 Mr. Manuel A. Fonseca, General Civil
 Mr. Jack C. Gunn, Family
 Mr. Alan D. Hall, General Civil
 Ms. Janice L. Hamilton, General Civil
 Mr. Benjamin M. Harris, General Civil
 Ms. Caryn M. Harris, General Civil
 Ms. Reba M. Hinkle, Family
 Mr. Van L. Hohe, Family/DV
 Mr. Jay L. Johnson, General Civil
 Ms. Rebecca L. Lashbrook, Family
 Hon. Kindall T. Lawson, General Civil
 Hon. Jo Ann Lehberger, Family

Mr. George T. Lewis, General Civil
 Ms. Suzanne M. Lockert-Mash, Family
 Mr. Thomas J. Long, General Civil/Family
 Ms. Danita Q. Marsh, Family
 Mr. Jonathan L. May, General Civil
 Mr. Ronald W. McAfee, General Civil
 Ms. Amanda O. Merideth, General Civil
 Mrs. Kathryn S. Patten, General Civil/Family
 Mr. Leslie L.E. Pearson, Family
 Ms. Amy B. Pollina, Family
 Mrs. Nekishia N. Potter, Family/DV
 Ms. Jessica R. Reeves, General Civil
 Mr. Antonio Ruiz, Family
 Ms. Loren A. Sanderson, General Civil
 Mr. E. Brian Sellers, General Civil
 Mr. David M. Shippert, General Civil
 Mr. Jerry A. Sisson, General Civil
 Mr. James T. Street, General Civil
 Mr. Jack M. Tallent, II, General Civil
 Mr. Deadrick L. Thaxton, General Civil
 Ms. Latonya L. Todd, General Civil
 Ms. Courtney Schuyler Vest, General Civil
 Mr. Olaf Wasternack, General Civil

Important ADRC Dates

March 4, 2014 Rule 31 Mediator Applications Deadline for ADRC review on April 22, 2014
April 22, 2014 ADR Commission Meeting, Administrative Office of the Courts, Nashville
June 3, 2014 Rule 31 Mediator Applications Deadline for ADRC review on July 29, 2014
July 29, 2014 ADR Commission Meeting, Administrative Office of the Courts, Nashville
September 11, 2014 Rule 31 Mediator Applications Deadline for ADRC review on November 6, 2014
November 6, 2014 ADR Commission Meeting, Holiday Inn-Vanderbilt, 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 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 Claudia Lewis, AOC Programs Manager, at Claudia.Lewis@tncourts.gov.