

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**In Re: Petition for the Adoption of Amended Tennessee Supreme Court Rule  
31**

**[CountyAndTrialCourt]  
[TrialCtNum]**

**No. M2013-01612-SC-RL1-RL**

**Date Printed: 11/08/2013**

**Notice / Filed Date: 07/29/2013**

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**NOTICE - Filing - Comments to Rule Amendment  
COMMENT OF JOE G. RILEY**

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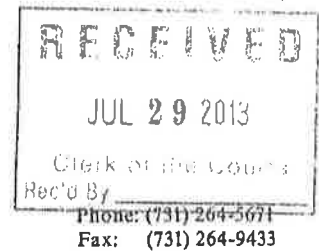
The Appellate Court Clerk's Office has entered the above action.

Michael W. Catalano  
Clerk of the Appellate Courts

m2013-01612-SC-RLI-RL

Law Office of  
**JOE G. RILEY**  
115 Lake Street  
P.O. Box 40  
Ridgely, TN 38080

Rule 31 Listed General Civil Mediator  
E-Mail: jriley@ecsis.net



July 26, 2011

Michael W. Catalano, Clerk  
Re: Tenn. Sup. Ct. R. 31  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

RE: Proposed Amendments to Rule 31

Your Honors:

Thank you for the opportunity to comment upon the Alternative Dispute Resolution Commission's proposed amendments. My only comment concerns Section 18(b). As a condition of continued listing as a Rule 31 mediator, the proposed rule provides as follows:

"The Rule 31 Mediator must not be the subject of three or more open complaints made to the Board or Agency charged with hearing complaints about the applicant's professional conduct. If there are three or more open complaints with the relevant Board or Agency, the Mediator will be put on the inactive list by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist."

In my view, the problem is that there is no requirement that such complaints have any merit. The deprivation is simply based upon complaints pending. It would appear to be unfair to punish a mediator because three people have filed, and have pending, what may well be meritless or even frivolous complaints. We cannot assume that meritless complaints will be immediately dismissed upon their filing by the disciplinary authority. Many complaints against attorneys are found to be without merit after an investigation. I assume the proposed rule would mean three disgruntled litigants in the same lawsuit could file separate disciplinary complaints against the opposing attorney at or about the same time, resulting in non-renewal of that attorney's listing even though the complaints are subsequently found to be without merit by the BPR.

I am sure the ACRC has reasons for its proposal, but the present proposal appears to deprive a mediator of the listing merely because of the number of complaints, which may or may not have merit, that may be pending at the time of renewal.

Thank you again for the opportunity to comment.

Sincerely yours,



Joe G. Riley



COPY

Supreme Court – Middle Division  
Appellate Court Clerk's Office - Nashville  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407  
(615) 741-2681

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TN SUPREME COURT  
ADMIN. OFFICE OF THE COURTS

D. Bruce Shine  
433 E. Center Street  
Kingsport TN 37660

Re: M2013-01612-SC-RL1-RL - In Re: Petition for the Adoption of Amended Tennessee Supreme Court Rule 31

Notice: Filing - Comments to Rule Amendment

Attached to this cover letter, please find the referenced notice issued in the above case. If you have any questions, please feel free to call our office at the number provided.

cc: D. Bruce Shine

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**In Re: Petition for the Adoption of Amended Tennessee Supreme Court Rule  
31**

**[CountyAndTrialCourt]  
[TrialCtNum]**

**No. M2013-01612-SC-RL1-RL**

**Date Printed: 11/08/2013**

**Notice / Filed Date: 11/05/2013**

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**NOTICE - Filing - Comments to Rule Amendment  
COMMENT OF KNOXVILLE BAR ASSOCIATION**

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The Appellate Court Clerk's Office has entered the above action.

Michael W. Catalano  
Clerk of the Appellate Courts

M2013-01612-SC-RLI-RL



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Clerk of the Courts  
Rec'd By \_\_\_\_\_

**Knoxville Bar Association**  
505 Main Street, Suite 50  
P.O. Box 2027  
Knoxville, TN 37901-2027  
PH: (865) 522-6522  
FAX: (865) 523-5662  
www.knoxbar.org

October 31, 2013

VIA EMAIL  
AND UNITED STATES MAIL

Mr. Michael W. Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

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Hon. John F. Wenver

Shelly L. Wilson

**Executive Director**

Martha S. Wilson  
mwilson@knoxbar.org

Re: Comment of the Knoxville Bar Association Regarding the  
Proposed Amendments to Rule 31

Dear Mr. Catalano:

Pursuant to the Tennessee Supreme Court's order filed July 22, 2013, soliciting comments on proposed amendments to Tennessee Supreme Court Rule 31, the Knoxville Bar Association has carefully considered the proposed amendments and respectfully submits the following comments.

The KBA, through its Professionalism Committee, studied the proposed amendments and felt that only two of the proposed amendments required comment or discussion. The particular sections are Section 10, Paragraph (f) and Section 18, Paragraph (b).

Considering Section 10(f), it is the KBA's position that the Court should adopt the proposed amendment that a "Rule 31 Neutral shall not be called as a witness to enforce the terms of the resulting agreement." Some initial concerns were raised that the mediator is the only neutral actor able to inform a Court as to the ability of the parties to enter into a mediated agreement. However, there was unanimous agreement that absolute immunity from being called as a witness would be preferred and would better enable Rule 31 Mediators to carry out one's duties. It was discussed that the Court may consider adding an additional, separate paragraph co-opting Federal language, such as found in Local Rule 16.4:

The Mediation Conference of all proceedings relating thereto, including statements made by any party, attorney, or other

Comment of the Knoxville Bar  
Association Regarding the  
Proposed Amendments to Rule 31  
Page 2

participant, are confidential and are inadmissible to the same extent as discussions of compromise and settlement are inadmissible under Federal Rules and Evidence 408.

Lastly, as to Section 18 (b), it is KBA's recommendation that the Supreme Court not adopt the language as proposed and further study the issue. The KBA shares the Supreme Court's desire to ensure the quality of Rule 31 Mediators, but the KBA has doubts that the proposed language will achieve the desired results. One issue identified is that the Rule 31 Mediators are not only attorneys, but come from many allied professions and further information would be necessary to determine the different processes existing for the making of and processing of complaints to the relevant boards or agencies for those allied professions. Additionally, there is no requirement that the three or more open complaints be valid or meritorious. The proposed language seems to place more value on the existence of complaints themselves rather than on the merits of the complaints. The proposed language could bar quality mediators from the active list due to three frivolous open complaints where a suspect Rule 31 Mediator could remain on the active list because several valid complaints have now been closed. The proposed language would allow for unscrupulous parties to detrimentally affect the practice of a Rule 31 Mediator by simply having numbers of anonymous complaints made to the board. Additionally, the KBA has reviewed the July 26, 2011 letter from Joe G. Riley, Esq. to Michael W. Catalano, Clerk regarding the proposed amendments to Section 18(b) and agree with his concerns.

As always, we appreciate the opportunity to comment on proposed rules promulgated by the Tennessee Supreme Court.

Sincerely,

*Heidi A. Barcus*

Heidi A. Barcus, President  
Knoxville Bar Association



TENNESSEE BAR  
ASSOCIATION

**PRESIDENT**

Cindy Wyrick  
P.O. Box 5365  
Sevierville, Tennessee 37862  
(865) 453-2866  
FAX (805) 429-1540  
Email: cwyrick@ogrlawfirm.com

**PRESIDENT-ELECT**

Jonathan Steen  
464 North Parkway, Suite A  
Jackson, Tennessee 38305  
(731) 660-2332  
FAX (731) 664-1109  
Email: jsteen@rsrlawfirm.com

**VICE PRESIDENT**

Bill Harbison  
150 3rd Avenue South  
Suite 1100  
Nashville, Tennessee 37201  
(615) 742-4200  
FAX (615) 742-4539  
Email: bharbison@sherrardroe.com

**TREASURER**

Sherlee Edwards  
P.O. Box 1065  
Brentwood, Tennessee 37024  
(615) 846-8205  
FAX (615) 846-6070  
Email: sherlee@svmic.com

**SECRETARY**

Jason Pannu  
P.O. Box 198615  
Nashville, Tennessee 37219-8615  
(615) 259-1366  
Fax: (615) 259-1389  
Email: jpannu@lewisking.com

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Jacqueline Dixon

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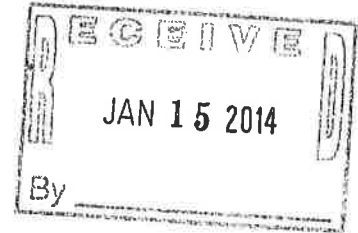
**GENERAL COUNSEL**

Paul Ney, Nashville

**EXECUTIVE DIRECTOR**

Allan F. Ramsaur, Nashville  
Email: aramsaur@tnbar.org

January 15, 2014



The Honorable Michael Catalano  
Clerk, Tennessee Supreme Court  
Supreme Court Building, Room 100  
401 Seventh Avenue North  
Nashville, TN 37219

IN RE: PETITION FOR THE ADOPTION OF  
AMENDED SUPREME COURT RULE 31

Dear Mike:

Attached please find an original and six copies of the Comment of the Tennessee Bar Association in reference to the above matter.

We would like to acknowledge the assistance in the preparation of this comment by Christy Gibson a staff member at the TBA and a student at the Nashville School of Law.

As always, thank you for your cooperation. I remain,

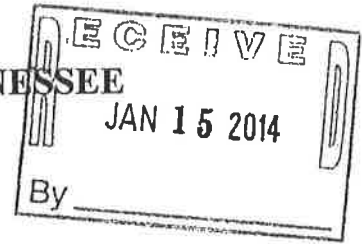
Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Cindy Wyrick, President, Tennessee Bar Association  
Jackie Kittrell, Chair, TBA Dispute Resolution Section  
Paul Ney, General Counsel  
Christy Gibson  
Service List

Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421 • (800) 899-6993  
FAX (615) 297-8058  
www.tba.org

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



IN RE: PETITION FOR THE  
ADOPTION OF AMENDED  
TENNESSEE SUPREME  
COURT RULE 31

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)  
) No. M2013-01612-SC-RLI-RL  
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COMMENT OF THE TENNESSEE BAR ASSOCIATION

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The Tennessee Bar Association (“TBA”), by and through its President, Cynthia R. Wyrick; Chair, TBA Dispute Resolution Section, Jackie Kittrell; General Counsel, Paul C. Ney; and Executive Director, Allan F. Ramsaur, makes the following comment regarding the amendments to the Tennessee Supreme Court Rule (TN. Sup. Ct. R.) 31.

On July 22, 2013, this Honorable Court issued an Order soliciting comments on various amendments proposed by the Alternate Dispute Resolution Commission (ADRC). The TBA solicited comments from all of the affected practice groups in the association. Based upon the recommendations of the affected sections the TBA hereby submits comments related to two proposed changes: (1) adding the role of



“scrivener” to TN. Sup. Ct. R. 31, Section 10(e) and (2) expanding eligibility requirements in TN. Sup. Ct. R. 31, Section 17(d)(1) for those who completed required mediation coursework and training at an “accredited graduate school.”

**Comments related to TN. Sup. Ct. R. 31 Section 10(e):**

**GREATER CLARITY AND GUIDANCE SHOULD BE PROVIDED REGARDING THE NEWLY DEFINED ROLE OF SCRIVENER AS IT APPLIES TO NEUTRALS.**

The ADRC proposes the following paragraph be added to TN. Sup. Ct. R. 31

Section 10(e):

“Rule 31 Neutrals may assist the parties by serving as a scrivener to record or memorialize the terms of the settlement agreement.”

In regards to this new language, the TBA recommends that greater clarity and guidance is needed to avoid confusion and possible violation of ethical obligations when neutrals are acting in this new role of “scrivener”:

(1) The Rule should include a clear definition for the role of “scrivener,” that takes into account the specific duty of the neutral in assisting the parties. Especially given that this new role of “scrivener” is a permissive one, the specific obligations of the neutral should be emphasized, especially when certain issues arise. Some of

these potential issues include but are not limited to: giving legal advice; recording or memorializing complex settlement agreements; engaging in the unauthorized practice of law; and, in situations when parties are not represented by counsel.

“Scrivener” implies a clerical or notary role and mediators who scribe agreements would be required to remain in the neutral role. However, the parties who ask for assistance in recording or memorializing an agreement often are those who are either not represented by counsel or whose counsel does not attend the mediation session. The legal advice and UPL issues that may arise during the recording or memorializing of an agreement can be addressed by providing a more clear definition of the term and role of “scrivener,” thus assisting the mediator to better understand his or her role during the process.

(2) The Rule should include comments that provide guidance to mediators, especially related to the affirmative duties and obligations outlined in the context of the entire TN. Sup. Ct. R. 31, Section 10. Comments would be helpful in providing direction and examples for handling similar issues, which would alleviate confusion or dilemmas that may arise when the neutral is serving as “scrivener.” Comments could help address numerous potential issues that may arise, including but not limited to those mentioned above: giving legal advice;

recording or memorializing complex settlement agreements; engaging in the unauthorized practice of law; and, in situations when parties are represented by counsel.

(3) The Rule should clarify between allowed scribing by lawyer and non-lawyer mediators. The lawyer's role in dispute resolution actions is governed by TN. Sup.

R. 8, RPC 2.4. Section 2.4(e) reads:

“upon termination of a lawyer's service as a dispute resolution neutral, the lawyer: (1) may, with the informed consent of all the parties to the dispute and in compliance with the requirements of RPCs 1.2(c) and 2.2, draft a settlement agreement that results from the dispute resolution process, but shall not otherwise represent any or all of the parties in connection with the matter, and (2) shall afford each party to the dispute the protections afforded a client by RPCs 1.6, 1.8(b), and 1.9.”

On the other hand, there are no similar rules addressing scribing by non-lawyer mediators.

(4) The Rule should be revised to provide specific guidelines to non-lawyer mediators to allow them to avoid engaging in the Unauthorized Practice of Law, especially as it relates to serving in the role of scrivener. The Tennessee

Unauthorized Practice of Law statute Tennessee Code Annotated § 23-3-101 reads as follows:

“No person shall engage in the "practice of law" or do "law business"...unless such person has been duly licensed therefore.”

This language makes it very clear that a non-lawyer cannot engage in the practice of law. Questions that arise under TN. Sup. Ct. R. 31, Section 10(e) are whether it is even possible for the non-lawyer mediator to serve as scribe without engaging in the practice of law. While the mediator may provide information to the parties about legal matters and community resources that are within the mediator's expertise, there are many issues that might arise that are within a gray area for the mediator as discussed above in (1) when the terms of a settlement agreement are memorialized.

**Comments related to TN. Sup. Ct. R. 31 Section 17(d)(1):**

**RECOGNITION OF REQUIRED DISPUTE RESOLUTION COURSES SHOULD BE RESERVED FOR CREDIBLE ACCREDITING BODIES.**

The current TSC Rule 31 section 17(d)(1) allows the ADRC to waive the normally required mediation training for those applicants who graduated from an accredited “law school” and took substantially the same subjects and received at least three

semester hours of credit. The proposed change would add eligibility based on completed coursework from “accredited graduate schools.”

Specifically, the ADRC proposes the following change in TN. Sup. Ct. R. 31,

Section 17(d)(1):

(d)( 1) Upon petition to and acceptance by the ADRC, the following persons may be qualified as Rule 31 Mediators without first complying with the qualification and training requirements set forth in Section 17(a), (b), or (c): (i) graduates of accredited law schools or accredited graduate schools who have passed a ~~law school~~ mediation course which awards at least three semester hours credit and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and who have four years of full time practical work experience; (ii) trained mediators who substantially comply with the qualifications set forth for Rule 31 Mediators in general civil cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the assistance of the AOC Programs Manager, provided that their training be the substantial equivalent of that required under this Rule and that the training has been completed within fifteen years prior to the application. If a trained mediator has complied with the qualifications for approval as a mediator by another state and such approval has been granted, and if the mediator is in good standing in such state at the time of the application for approval in Tennessee, the ADRC may, upon review of the qualifications of the applicant, waive such training requirements as required by Section 17. (iii) Alternative dispute resolution professors at accredited law schools or graduate schools who have taught a mediation course which awards at least three semester hours credit for at least two semesters and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and who have four years of full time practical work experience.

In regards to this amendment the TBA makes the following recommendations:

(1) The rule should define an accredited graduate school as a school accredited by an independent accrediting agency recognized by the Council of Higher Education Accreditation (CHEA) or the United States Department of Education (USDE) or both. There are numerous private organizations throughout the United States that claim to be accredited institutions of higher learning many of which may or may not be legitimate. Defining an accredited graduate school as one accredited by an official organization recognized by the Council of Higher Education Accreditation (CHEA) or the United States Department of Education (USDE) or both should prevent any legitimacy issues that may arise in the future.

(2) There should be a defined criteria and process for determining whether the required graduate school coursework taken is equivalent to the approved mediation-training curriculum. One specific area of concern arises with programs that utilize online or other distance instruction in the required mediation courses. Many graduate schools offer distance learning as an option and some programs are entirely comprised of coursework completed remotely. Although the Distance

Education Training Council (DETC) may accredit these programs, the ADRC approved mediation training depends on face-to-face interaction and role-play simulation. Providing specific criteria for how distance-learning programs are substantially equivalent or otherwise provide for this interaction would be helpful in evaluating them.

Specifying the appropriate accreditation and how to determine the equivalency of graduate school coursework and mediation-training curriculum should ensure that the ADRC's mediation training standards are met.

#### CONCLUSION

For the reasons stated, the TBA urges the Court to modify the rules changes sought by the ARDC before adopting the proposed amendments.

RESPECTFULLY SUBMITTED,

By: /s/ by permission \_\_\_\_\_

Nashville, Tennessee 37203  
(615) 242-2400

By: \_\_\_\_\_

ALLAN F. RAMSAUR (005764)  
Executive Director,  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421

### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

\_\_\_\_\_  
Allan F. Ramsaur



CYNTHIA R. WYRICK (016872)  
President, Tennessee Bar Association  
Ogle, Gass & Richardson PC  
P.O. Box 5365  
Sevierville, TN 37864  
(865) 453-2866

By: /s/ by permission

---

JACKIE KITTRELL (013578)  
Chair, Tennessee Bar Association  
Dispute Resolution Section  
Community Mediation Center  
912 S. Gay, Suite L-300  
Knoxville, Tennessee 37902  
(865) 594-1879

By: /s/ by permission

---

PAUL C. NEY (011625)  
General Counsel,  
Tennessee Bar Association  
Waddey & Patterson  
1600 Division Street,

Charles Grant  
President  
Nashville Bar Association  
211 Commerce St., Suite 800  
Nashville, TN 37201-1817

Shawn Fry  
President  
Putnam County Bar Association  
165 E Spring St.  
Cookeville, TN 38501

Kirk Caraway  
President  
Memphis Bar Association  
Brinkley Plaza 80 Monroe Ave., Ste 650  
Memphis, TN 38103-2466

Ted Burkhalter  
President  
Blount County Bar Association  
405 Ellis Ave.  
Maryville, TN 37804-5823

Jeremy Ball  
President  
Jefferson County Bar Association  
P.O. Box 690  
Dandridge, TN 37725

Tish Holder  
President  
Hickman County Bar Association  
820 Hwy 100  
Centerville, TN 37033

Terri Crider  
President  
Gibson County Bar Association  
P.O. Box 160  
Humboldt, TN 38343

Derreck Whitson  
President  
Cocke County Bar Association  
P.O. Box 1230  
Newport, TN 37822

Gigi Woodruff  
Executive Director  
Nashville Bar Association  
150 4th Avenue N; Suite 1050  
Nashville, TN 37219

Amber Shaw  
President  
Tipton County Bar Association  
114 W. Liberty Avenue, Suite 300  
Covington, TN 38019

Diana Burns  
Rutherford-Cannon County Bar Association  
20 N Public Sq Ste 202  
Murfreesboro, TN 37130-3667

Chris Varner  
President  
Robertson County Bar Association  
835 Georgia Ave, Suite 800  
Chattanooga, TN 37402

Jack Tapper  
President  
Bradley County Bar Association  
2625 Ralph Buckner Blvd NE  
Cleveland, TN 37311-1452

Christopher Keeton  
President  
Coffee County Bar Association  
401 Murfreesboro Hwy  
Manchester, TN 37355-1580

James Taylor  
President  
Rhea County Bar Association  
1374 Railroad St., Ste 400  
Dayton, TN 37321-2211

Lynda Hood  
Executive Director  
Chattanooga Bar Association  
801 Broad St., Suite 420 Pioneer Bldg  
Chattanooga, TN 37402

Jason Holly  
President  
Carter County Bar Association  
415 Hudson Dr.  
Elizabethton, TN 37643-2881

Matthew Willis  
President  
Dyer County Bar Association  
PO Box H  
Dyersburg, TN 38025

Stanley Ross  
President  
Montgomery County Bar Association  
PO Box 925  
Clarksville, TN 37041-0925

Matthew Edwards  
President  
Cumberland County Bar Association  
69 E First St., Ste 203  
Crossville, TN 38555-4575

Daryl Colson  
President  
Overton County Bar Association  
808 North Church St  
Livingston, TN 38570

John Willis  
President  
Anderson County Bar Association  
310 N. Main St.  
Clinton, TN 37716-3752

Jay Ingram  
President  
Sumner County Bar Association  
117 E Main St.  
Gallatin, TN 37066

William Phillips  
President  
Hawkins County Bar Association  
210 E Main St.  
Rogersville, TN 37857

Marsha Wilson  
Executive Director  
Knoxville Bar Association  
P.O. Box 207  
Knoxville, TN 37901

Anne Fritz  
Executive Director  
Memphis Bar Association  
80 Monroe, Suite 220  
Memphis, TN 38103

Hilary Duke  
President  
Dickson County Bar Association  
210 East College Street  
Dickson, TN 37055

Chuck Holliday  
Jackson-Madison-Henderson County Bar Association  
65 Stonebridge Blvd.  
Jackson, TN 38305

Jennifer Porth  
President  
Fifteenth Judicial District Bar Association  
224 W Gay St.  
Lebanon, TN 37088-0792

Robert Curtis  
President  
Giles County Bar Association  
209 W Madison St.  
Pulaski, TN 38478-3222

Carol Lahrman  
Executive Director  
Tennessee Lawyers Association for Women  
PO Box 331214  
Nashville, TN 37203

John Lee Williams  
President  
Humphreys County Bar Association  
102 S Court Square  
Waverly, TN 37185

David Myers  
President  
Union County Bar Association  
105 Monroe St.  
Maynardville, TN 37807-0013

Carmon Hooper  
President  
Haywood County Bar Association  
PO Box 55  
Brownsville, TN 38012

William Cockett  
President  
Johnson County Bar Association  
247 West Main Street  
Mountain City, TN 37683-0108

William Lawson  
President  
Unicoi County Bar Association  
112 Gay St., Suite A  
Erwin, TN 37650-0016

Randall Self  
President  
Lincoln County Bar Association  
131 A Market St. E  
Fayetteville, TN 37334-0501

Beverly Rayburn  
President  
Maury County Bar Association  
14 Public Square  
Columbia, TN 38401

John Miles  
President  
Obion County Bar Association  
PO Box 8  
Union City, TN 38281

Mark Blakley  
President  
Scott County Bar Association  
PO Box 240  
Huntsville, TN 37756

Creed Daniel  
President  
Grainger County Bar Association  
PO Box 6  
Rutledge, TN 37861

William Mitchell  
President  
White County Bar Association  
112 South Main Street  
Sparta, TN 38583

William Douglas  
President  
Lauderdale County Bar Association  
109 N Main St.  
Ripley, TN 38063-0489

Andrew Frazier  
President  
Benton County Bar Association  
PO Box 208  
Camden, TN 38320

David Stanifer  
President  
Claiborne County Bar Association  
PO Box 217  
Tazewell, TN 37879

Joseph Ford  
President  
Franklin County Bar Association  
17 S College St.  
Winchester, TN 37398

Mary Helms  
President  
Hamblen County Bar Association  
P. O. Box 1834  
Morristown, TN 37816

Craig Brent  
President  
Williamson County Bar Association  
224 1st Ave S  
Franklin, TN 37064-2214

Matt Maddox  
President  
Carroll County Bar Association  
PO Box 827  
Huntingdon, TN 38344

Robin Miller  
President  
Chattanooga Bar Association  
PO Box 1749  
Chattanooga, TN 37401

Gerald Largen  
President  
Roane County Bar Association  
PO Box 266  
Kingston, TN 37763

John White  
President  
Bedford County Bar Association  
PO Box 169  
Shelbyville, TN 37162

Bratten Cook  
President  
DeKalb County Bar Association  
104 N 3rd St.  
Smithville, TN 37166

William Locke  
President  
Warren County Bar Association  
PO Box 7142  
McMinnville, TN 37111-7142

James Gass  
President  
Sevier County Bar Association  
PO Box 5365  
Sevierville, TN 37864

Ben Boston  
President  
Lawrence County Bar Association  
P O Box 357  
Lawrenceburg, TN 38464

Timothy Naifeh  
President  
Lake County Bar Association  
227 Church St.  
Tiptonville, TN 38079

Michael Davis  
President  
Morgan County Bar Association  
364 Cumberland Mountain Circle  
Wartburg, TN 37887-0756

Harriet Thompson  
President  
Hardeman County Bar Association  
P O Box 600  
Bolivar, TN 38008

Wade Davies  
President  
Knoxville Bar Association  
PO Box 1126  
Knoxville, TN 37901

Scott McGinness  
President  
Tennessee Board of Law Examiners  
832 Georgia Ave Ste 1000  
Chattanooga, TN 37402

Suzanne Keith  
Executive Director  
Tennessee Association for Justice  
1903 Division Street  
Nashville, TN 37203

Martin Holmes  
President  
Federal Bar Association Nashville Chapter  
424 Church Street, Suite 1401  
Nashville, TN 37219

Mario Ramos  
President  
TN Assoc. of Spanish Speaking Attorneys  
611 Commerce St., Suite 3119  
Nashville, TN 37203

Jon Peeler  
President  
Tennessee Association for Justice  
401 Church St. L&C Tower, 29th Floor  
Nashville, TN 37219

Sherry Percival  
President  
NBA, Ballard Taylor Chapter  
219 N Parkway, Suite 1  
Jackson, TN 38305-2717

Ursula Bailey  
President  
NBA, William Henry Hastie Chapter  
422 S Gay St., Ste 301  
Knoxville, TN 37902-1167

Stephen Johnson  
President  
TN Assoc. of Criminal Defense Lawyers  
606 W Main Ave., Ste 300  
Knoxville, TN 37902

Melanie Gober  
Executive Director  
Lawyers Assoc. for Women Marion Griffin  
PO Box 190583  
Nashville, TN 37219

David McKinney  
President  
NBA, Ben Jones Chapter  
505 Tennessee St., Apt. 118  
Memphis, TN 38103-4470

Judy McKissack  
Executive Director  
Tennessee Commission on CLE  
221 Fourth Avenue North, Suite 300  
Nashville, TN 37219

Mark Dessauer  
President  
Federal Bar Association Northeast  
PO Box 3740  
Kingsport, TN 37664

Wendy Longmire  
President  
Tennessee Lawyers Association for Women  
PO BOX 198985  
Nashville, TN 37219

Katharine Gardner  
President  
Federal Bar Assoc. Chattanooga Chapter  
103 Stratford Way  
Signal Mountain, TN 37377-2520

Bradford Box  
President  
Tennessee Defense Lawyers Association  
209 East Main St.  
Jackson, TN 38301

Chantelle Roberson  
President  
NBA, S.L. Hutchins Chapter  
1 Cameron Hill Circle  
Chattanooga, TN 37402

Mary Dohner Smith  
President  
Lawyers Association for Women Marion  
Griffin Chapter  
401 Commerce St., Ste. 1010  
Nashville, TN 37219-2484

Eric Hudson  
President  
Federal Bar Association Memphis Chapter  
6075 Poplar Ave., Ste 500  
Memphis, TN 38119

John Manson  
President  
NBA, Napier-Looby Chapter  
1 Public Square  
Nashville, TN 37201

Vinh Duong  
President  
TN Asian Pacific American Bar Association  
511 Union St., #2700  
Nashville, TN 37210

Bill Young  
Administrative Director  
Administrative Offices of the Courts  
511 Union St., # 600  
Nashville, TN 37219

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church St., Suite 120  
Nashville, TN 37219

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners  
401 Church Street  
Nashville, TN 37243-0740

Ann Pruitt  
Executive Director  
Tennessee Alliance for Legal Services  
1220 Vintage Place  
Nashville, TN 37215

Cindy Wyrick  
President  
Tennessee Bar Association  
PO Box 5365  
Sevierville, TN 37864-5365

Rebecca Franklin  
President  
East TN Lawyers Association for Women  
4612 Woodbridge Lane  
Knoxville, TN 37921

Frances Riley  
President  
Association for Women Attorneys  
327 Central Cv  
Memphis, TN 38111-6008

Amanda Dunn  
President  
SETLAW  
P. O. Box 151  
Chattanooga, TN 37401-0151

Tiffany Johnson  
President  
Tennessee Alliance for Black Lawyers  
1067 Fleece Place  
Memphis, TN 38104-5620

Suanne Bone  
Executive Director  
TN Assoc. of Criminal Defense Lawyers  
530 Church St., # 300  
Nashville, TN 37219

Russell Blair  
President  
McMinn-Meigs County Bar Association  
PO Box 1764  
Athens, TN 37371

Albert Wade  
President  
Paris-Henry County Bar Association  
109 West Blythe Street  
Paris, TN 38242

Lynn Newcomb  
President  
Cheatham County Bar Association  
102 Frey St.  
Ashland City, TN 37015

Lesley Tiller  
President  
Bristol Bar Association  
P.O. Box 526  
Blountville, TN 37617

Ashley Shudan  
President  
Loudon County Bar Association  
PO Box 905  
Loudon, TN 37774

Amber Lee  
President  
Washington County Bar Association  
300 E. Main St., Ste 159  
Johnson City, TN 37601

Jason Davis  
President  
Marshall County Bar Association  
520 North Ellington Parkway  
Lewisburg, TN 37091

Beau Pemberton  
President  
Weakley County Bar Association  
109 North Poplar Street  
Dresden, TN 38225-0789

Lindsey Lane  
President  
Greene County Bar Association  
131 S Main St., Ste 102  
Greeneville, TN 37743

Tyler Weiss  
President  
Monroe County Bar Association  
409 College St. N, Ste. 1  
Madisonville, TN 37354-3103

**Tennessee Alternative Dispute Resolution Commission**

**Rules & Policy Review Committee**

**April 14, 2014**

The TADRC filed a petition with the Tennessee Supreme Court on July 15, 2013, requesting that certain provisions of TSC Rule 31 be amended. The Court published the proposed amendments for public comment. The deadline for submission was January 15, 2014. Several comments were submitted.

The TADRC submitted the public comments to its Rule & Policy Review Committee, and the following represents the comments and recommendations of the Committee in response thereto:

Former judge and current mediator Joe G. Riley, Jr. of Ridgely, Tennessee, recommended that the proposed changes to Section 18 (b) that would require that a renewing mediator not be subject to three or more open complaints, could create the potential for abuse. The proposed change does not address a threshold question as to whether the complaints are with merit or justification. This comment was joined by the Knoxville Bar Association with a similar one.

As to this comment, the Rule & Policy Review Committee recommends that the Commission respond to the Court with a request that this proposed amendment be withdrawn. Within the Commission's disciplinary process, and without the need for a proposed amendment to Rule 31, the Committee recommends that as a matter of process policy, each Grievance Committee that is formed to consider a complaint should be given the disciplinary history, if any of the respondent.

The Knoxville Bar Association offered a comment on the proposed amendment to Section 10 (f), which addresses the subject of a mediator being called as a witness to enforce the terms of a mediation agreement. The KBA requested the addition of language similar to the USDC Local Rule in Knoxville.

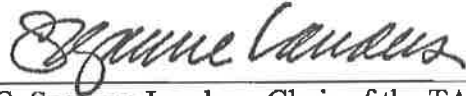
In response, the Committee notes that the current version of Rule 31, Section 10 (d) provides for confidentiality, except as may be required by law. TCA §36-4-130 (b)(5) addresses confidentiality relating to abuse or neglect of a child. The Committee believes that the existing language, combined with the proposed language is sufficient for the intended purposes and the proposed addition is not necessary.

The Tennessee Bar Association expressed a concern regarding the proposed amendment to Section 10 (e), as it related to the neutral assisting the parties by serving as a scrivener to record or memorialize the terms of the settlement agreement, reached within the mediation.

The Committee recommends that the proposed language be replaced with “The Neutral may assist the parties in memorializing the terms of the parties’ settlement at the end of the mediation.”

The Tennessee Bar Association commented on the proposed change to Section 17 (d)(1), which relates to mediation training waivers in certain circumstances.

The Committee recommends that to promote consistency and efficiency within the full breadth of Rule 31, it would be better to change the existing and proposed language “graduates of accredited law school or accredited graduate schools who have passed.....”, and replace with “persons holding graduate degrees.” The subject of accreditation is addressed in the definitions section of Rule 31 at Section 2 (b).



C. Suzanne Landers, Chair of the TADRC  
Rules & Policy Review Committee

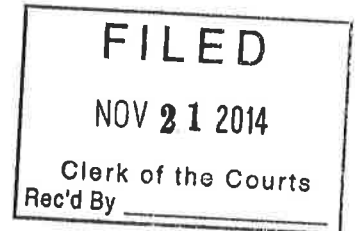
IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

IN RE: PETITION FOR THE ADOPTION OF AMENDED  
TENNESSEE SUPREME COURT RULE 31

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No. M2013-01612-SC-RL1-RL

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**ORDER**

On July 15, 2013, the Alternative Dispute Resolution Commission (“Commission”) filed a petition asking the Court to amend Sections 2, 3, 4, 5, 9, 10, 11, 17, 18, and 19 of Rule 31, Rules of the Tennessee Supreme Court. On July 22, 2013, the Court filed an order soliciting written comments on Commission’s proposed amendments from the bench, the bar, and the public. After the expiration of the public-comment period, the Court asked the Commission to consider the written comments received during the comment period. The Commission thereafter appointed a committee to review the public comments and to propose any modifications to the amendments in light of those comments. The committee recommended that the Commission adopt several changes to the proposed amendments, and the Commission adopted the committee’s suggested changes. The Commission then submitted its modified proposed amendments to the Court.

The Commission’s modified proposed amendments are attached as an appendix to this order. [For the sake of simplicity, the Court notes that the only proposed amendments that were modified by the Commission are the amendments to Sections 10(d), 17(d)(1), and 18(b).] The Court hereby publishes the proposed amendments, as modified by the Commission, and solicits written comments from the bench, the bar, and the public. The deadline for submitting written comments is Monday, December 22, 2014. Written comments should be addressed to:

James Hivner, Clerk  
Re: Tenn. Sup. Ct. R. 31  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

and should reference the docket number set out above.



The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

**Alternative Dispute Resolution Commission's  
Modified Proposed Amendments to Tenn. Sup. Ct. R. 31**

(proposed new text indicated by underlining;  
proposed deleted text indicated by ~~overstriking~~)

(NOTE: provisions of the existing rule that are omitted below  
will be retained in their current form.)

**[Delete Section 2 and replace it with the following new Section 2; in addition to the proposed new text and the proposed deleted text indicated below, the sequential paragraph designations are changed due to the new definitions added to Section 2:]**

1 (a) An “Active Rule 31 Mediator” is any person listed by the ADRC as a mediator pursuant  
2 to section 17 herein, who has complied with all applicable renewal listing and continuing  
3 education requirements and is approved by the ADRC to conduct court-ordered mediations.

4 (b) “Alternative Dispute Resolution Commission” or “ADRC” is the Alternative Dispute  
5 Commission established by the Supreme Court pursuant to this Rule.

6 (c) “Baccalaureate degree” and “graduate degree” are only those degrees awarded by an  
7 institution of higher education accredited by an agency recognized by the Council for Higher  
8 Education (CHEA) and approved or listed by the United States Department of Education as  
9 a recognized accrediting agency. A law degree from an educational institution recognized by  
10 the Tennessee Board of Law Examiners for the purpose of allowing its graduates to be  
11 eligible to take the Tennessee bar examination shall be deemed a graduate degree for the  
12 purpose of this rule. Degrees earned outside the United States shall be evaluated on a case  
13 by case basis by the Commission in order to determine whether the degree is substantially  
14 equal to a like and similar degree earned in this country and which degree if earned in this  
15 country would have been subject to the standards and academic quality which would be  
16 mandated by the foregoing accreditation process and procedure in this country.

17 (d) “Case Evaluation,” as set forth in sections 16 and 22 herein, is a process in which a  
18 neutral person or three-person panel, called an evaluator or evaluation panel, after receiving  
19 brief presentations by the parties summarizing their positions, identifies the central issues in  
20 dispute, as well as areas of agreement, provides the parties with an assessment of the relative  
21 strengths and weaknesses of their case, and may offer an evaluation of the case.

22 (e) "Court" includes the Tennessee Supreme Court, the Tennessee Court of Appeals, Circuit,  
23 Chancery, Law & Equity and Probate Courts, General Sessions Courts, Juvenile Courts, and  
24 Municipal Courts.

25 (f) "Days," for purposes of the deadlines imposed by this Rule, means calendar days.

26 (g) "Eligible Civil Action" includes all civil actions except forfeitures of seized property,  
27 civil commitments, adoption proceedings, habeas corpus and extraordinary writs, or juvenile  
28 delinquency cases. The term "Extraordinary writs" does not encompass claims or  
29 applications for injunctive relief.

30 (h) An "Inactive Rule 31 Mediator" is any person listed by the ADRC as a mediator pursuant  
31 to section 17 herein, who has not complied with all applicable renewal listing and continuing  
32 education requirements and is not approved by the ADRC to conduct court-ordered  
33 mediations.

34 (i) "Judicial Settlement Conference" is a mediation conducted by a judicial officer as set  
35 forth in section 20 herein.

36 (j) "Mediation" is an informal process in which a neutral person conducts discussions among  
37 the disputing parties designed to enable them to reach a mutually acceptable agreement  
38 among themselves on all or any part of the issues in dispute.

39 (k) "Mediator" is a neutral person who conducts discussions among disputing parties to  
40 enable them to reach a mutually acceptable agreement among themselves on all or any part  
41 of the issues in dispute.

42 (l) "Mini-Trial," as set forth in sections 15 and 23 herein, is a settlement process in which  
43 each side presents an abbreviated summary of its case to the parties or representatives of the  
44 parties who are authorized to settle the case. A neutral person may preside over the  
45 proceeding. Following the presentation, the parties or their representatives seek a negotiated  
46 settlement of the dispute.

47 (m) "Neutral" is an impartial person who presides over alternative dispute resolution  
48 proceedings as defined in this Rule.

49 (n) "Non-Binding Arbitration" is a process in which a neutral person or a panel, called an  
50 arbitrator or an arbitration panel, considers the facts and arguments presented by the parties  
51 and renders a decision which is non-binding as set forth in sections 14 and 21 herein.

52 (o) Order of Reference is an a written or standing order of a court entered in or related to an  
53 eligible civil action in accordance with Section 3 (Initiation), directing the parties to  
54 participate in a Rule 31 proceeding.

55 (p) Rule 31 ADR proceedings are proceedings ~~initiated by the court~~ pursuant to this Rule,  
56 including, but not limited to, “Case Evaluations”, “Mediations”, “Judicial Settlement  
57 Conferences”, “Non-Binding Arbitrations”, “Summary Jury Trials”, “Mini-Trials”, or other  
58 similar proceedings. In the context of mediations, a “Rule 31 ADR Proceeding” is any  
59 mediation of an Eligible Civil Action conducted by an active Rule 31 Mediator.

60 (q) A “Rule 31 Mediator” is any person listed by the ADRC as a mediator pursuant to section  
61 17 herein.

62 ® A “Rule 31 Neutral” is any person who acts as a Neutral in a Mediation, Case Evaluation,  
63 Mini-Trial, Non-Binding Arbitration, Summary Jury Trial, or any other similar proceeding  
64 initiated by the court pursuant to this Rule. Rule 31 Neutrals, other than Rule 31 Mediators,  
65 are required to be licensed attorneys.

66 (s) A “Summary Jury Trial” as set forth in section 24 herein, is an abbreviated trial with a  
67 jury in which litigants present their evidence in an expedited fashion. The litigants and the  
68 jury are guided by a presiding neutral person. After an advisory verdict from the jury, the  
69 presiding neutral person may assist the litigants in a negotiated settlement of their  
70 controversy.

---

71 **[Amend Section 3(a) as follows:]**

72 (a) Rule 31 ADR Proceedings may be initiated by the consent of the parties or by the entry  
73 of an Order of Reference.

---

74 **[Amend Section 4(c) as follows:]**

75 ~~(c) The clerks for each judicial district~~ The Programs Manager of the Administrative Office  
76 of the Courts shall maintain and make available to the public upon request, a list of Rule 31  
77 Mediators listed by the ADRC, the date of their approval, and their qualifications and  
78 expertise by posting on the AOC website a list of Rule 31 Mediators listed by the ADRC, the  
79 date of their approval, and their occupation and contact information.

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80 **[Amend Section 5 as follows:]**

81 (a) The Order of Reference shall require the Rule 31 Neutral to ~~file~~ submit a final report  
82 pursuant to Rule 5.06, Tenn. R. Civ. P., with the court at the conclusion of the Rule 31 ADR  
83 Proceeding. The final report shall state only (i) which parties appeared and participated in  
84 the Rule 31 ADR proceeding, (ii) whether the case was completely or partially settled; and  
85 (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged  
86 as court costs. The report shall be filed within the time specified in the Order of Reference.  
87 In the event the Order of Reference does not specify a deadline, the final report shall be ~~filed~~  
88 submitted within 60 days of the initial meeting with the parties, or within the time period  
89 specified by the court.

90 ~~(b) Unless otherwise directed by the Order of Reference, the Rule 31 Neutral shall file status~~  
91 ~~reports with the court every 30 days until the Rule 31 ADR Proceeding is concluded.~~

92 (e ~~b~~) For an Eligible Civil Action mediated by a Rule 31 Mediator, a final report shall be  
93 ~~filed~~ submitted in the manner described within this section.

---

94 **[Amend Section 9(d)(4) as follows:]**

95 (d)(4)The Committee shall meet in person or by telephone conference as necessary to  
96 consider the request for an advisory opinion. Upon due deliberation, and upon the  
97 concurrence of a majority of the Committee, the Committee shall issue an opinion. The  
98 opinion shall be signed by each member of the Committee, filed with the Programs Manager,  
99 published in the ADR News and on the AOC website, and be made available upon request.

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100 **[Amend Section 10 by adding new paragraphs (e) and (f) as follows:]**

101 (e) The Neutral may assist the parties in memorializing the terms of the parties' settlement  
102 at the end of the mediation.

103 (f) Rule 31 Neutrals shall not be called as a witness to enforce any terms of the resulting  
104 agreement.

---

105 **[Amend Section 11(b)(18) as follows:]**

106 (b) (18) Once the Grievance Committee has issued an opinion, a synopsis of the case may  
107 be published in the ADRC quarterly newsletter and on the AOC website. If the mediator is  
108 not publicly sanctioned, the name of the complainant and mediator will not be included in  
109 the synopsis.

---

110 **[Amend Section 17(a), (b), and (d) as follows:]**

111 (a) Rule 31 Mediators in General Civil Cases.

112 (1) To be listed by the ADRC as a Rule 31 Mediator in general civil cases, one must:

113 (A) be of good moral character as evidenced by two references accompanying application  
114 for listing and certify in writing an intention to comply with the conditions and obligations  
115 imposed by Rule 31, including those requirements related to pro bono obligations;

116 (B) have a graduate degree plus four years of full time practical work experience, or a  
117 baccalaureate degree plus six years of full time practical work experience. Full time practical  
118 work experience shall be defined as 35 hours or more of work per week; and

119 (2) If the applicant's profession requires licensing, the applicant shall also:

120 (2)(A) be in good standing with the Board or Agency charged with issuing licenses to  
121 practice in the applicant's profession. The failure to take or pass an examination required by  
122 the Board or Agency will not affect the applicant's standing to apply for certification listing  
123 as a Rule 31 Mediator. A disbarred lawyer or any other professional with a suspended or  
124 revoked license may reapply when the applicant has been readmitted to practice. Misconduct  
125 shall not include failure to pay board or agency dues when there is no intent by the applicant  
126 to practice in the licensed occupation or profession in any jurisdiction other than Tennessee.

127 (b) Rule 31 Mediators in Family Cases.

128 (1) To be listed as a Rule 31 Mediator in family cases, one must:

129 (B) be a Certified Public Accountant, have a graduate degree, or have a baccalaureate degree  
130 with ten years full time practical work experience in psychiatry, psychology, counseling,  
131 family mediation, social work, education, law or accounting. Full time practical work  
132 experience shall be defined as 35 hours or more of work per week;

133 (C) have four years of full time practical work experience in psychiatry, psychology,  
134 counseling, social work, education, law or accounting. Full time practical work experience  
135 shall be defined as 35 hours or more of work per week.

136 (E) complete six additional hours of training in Tennessee family law and court procedure.  
137 It is provided, however, that the ADRC may waive this requirement for ~~lawyers~~ applicants  
138 who have completed at least six hours of ADRC-approved training devoted to Tennessee  
139 family law and/or procedure within the three-year period immediately prior to the completion  
140 of the requirements of Section 17(c)(3)(A) through (I).

141 (d) Waiver of Training Requirements for Certain Rule 31 Mediators.

142 (1) Upon petition to and acceptance by the ADRC, the following persons may be qualified  
143 as Rule 31 Mediators without first complying with the qualification and training  
144 requirements set forth in Section 17(a), (b), or (c): (i) ~~graduates of accredited law schools~~  
145 persons holding graduate degrees who have passed a ~~law school~~ mediation course, which  
146 awards at least three semester hours credit, and which includes the curriculum components  
147 set forth in this Rule or their substantial equivalent as determined by the ADRC, and who  
148 have four years of full time practical work experience; (ii) trained mediators who  
149 substantially comply with the qualifications set forth for Rule 31 Mediators in general civil  
150 cases or Rule 31 Mediators in family cases as may be determined by the ADRC with the  
151 assistance of the AOC Programs Manager, provided that their training be the substantial  
152 equivalent of that required under this Rule and that the training has been completed within  
153 fifteen years prior to the application; (iii) if a trained mediator has complied with the  
154 qualifications for approval as a mediator by another state and such approval has been granted,  
155 and if the mediator is in good standing in such state at the time of the application for approval  
156 in Tennessee, the ADRC may, upon review of the qualifications of the applicant, waive such  
157 training requirements as required by Section 17; and (iv) alternative dispute resolution  
158 professors at accredited law schools or graduate schools who have taught a mediation course  
159 which awards at least three semester hours credit for at least two semesters and which  
160 includes the curriculum components set forth in this Rule or their substantial equivalent as  
161 determined by the ADRC and who have four years of full time practical work experience.

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162 **[Amend Section 18 as follows:]**

163 (b) Annual Renewal of Rule 31 Mediator Status. As a condition of continued listing, each  
164 Rule 31 mediator must file an ~~annual report~~ annual renewal form with the AOC Programs

165 Manager attesting that he/she is in good standing with any professional licensing agency or  
166 organization, if applicable, and must pay the annual registration fee set by the ADRC.<sup>1</sup>

167 (c) Inactive Status.

168 (3) A Rule 31 Mediator placed on inactive status may apply to the ADRC for reactivation.  
169 To be approved for reactivation, the Rule 31 Mediator must complete all the continuing  
170 mediation education required by Rule 31 during the period of inactive status and must pay  
171 the renewal fee for the year in which the Rule 31 Mediator reactivates. The Programs  
172 Manager will review the request, determine if requirements have been met and, if met, place  
173 the Rule 31 Mediator on active status. If the Program Manager denies reactivation, that  
174 decision may be appealed to the ADRC. A Rule 31 Mediator placed on inactive status for at  
175 least fifteen consecutive calendar years will not be eligible to apply to the ADRC for  
176 reactivation. After fifteen consecutive calendar years, the Rule 31 Mediator's listing will be  
177 terminated and the Rule 31 Mediator will have to fulfill listing requirements pursuant to Rule  
178 31, Section 17.

---

179 **[Amend Section 19 as follows:]**

180 (b) The day-to-day work of the ADRC shall be conducted by the Programs Manager of the  
181 Administrative Office of the Courts who shall be responsible for:

182 (2) Processing ~~annual reports~~ annual renewal forms from Rule 31 mediators and approving  
183 their continued qualification for Rule 31 listing;

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<sup>1</sup> The Commission's original proposed amendment of Section 18(b) included the proposed addition of the following text:

The Rule 31 Mediator must not be the subject of three or more open complaints made to the Board or Agency charged with hearing complaints about the applicant's professional conduct. If there are three or more open complaints with the relevant Board or Agency, the Mediator will be put on the inactive list by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist.

In its modified proposed amendments, the Commission asked the Court to delete the foregoing text from the original proposal.



184 (3) Taking such steps as may be necessary to provide lists of Rule 31 mediators to the  
185 appropriate clerks of court and to maintain a current list of Rule 31 mediators on the AOC  
186 website;

187 (5) Processing grievances against Rule 31 non-attorney Mediators;

188 *[end of Appendix]*

**Tennessee Alternative Dispute Resolution Commission**

**Rule & Policy Review Committee Report**

**January 16, 2015**

In an Order dated November 21, 2014, the Tennessee Supreme Court solicited written comments to the ADR Commission's modified proposed amendments to Rule 31. The deadline for submission was December 22, 2014. Alan C. DeBusk and the Tennessee Bar Association submitted comments.

Chairman Howard Vogel submitted the public comments to the Rule & Policy Review Committee for review and for consideration of any recommendation to be made to the Commission and TSC. The Committee met by telephone conference on January 16, 2015, with committee members Suzanne Landers, George Brown, Tracy Shaw and chair Hayden Lait participating. Also on the call were Claudia Lewis and Howard Vogel. The following represents the comments and recommendations of the Committee in response thereto:

Attorney and Rule 31 listed general civil mediator Alan C. DeBusk recommended that the words "initiated by court" should also be struck in line 64 in paragraph (r) as it is in line 55 of paragraph (p) for consistency. (Line references are from the Appendix to the TSC Order, filed November 21, 2014) In response, the Committee recommends that the ADR Commission respond to the Court that it agrees with the suggestion of Mr. DeBusk.

The Tennessee Bar Association expressed three concerns about the ADR Commission's proposed changes to Rule 31, §10(e).

First, the Tennessee Bar Association requested that the ADR Commission add comments "to further illuminate what an ethical neutral does under different circumstances." The Committee recommends that the ADR Commission respond to the Court that the ADR Commission's proposed language is sufficient. Furthermore, if the ADR Commission's proposed language in Rule 31, §10(e) is approved, the Committee recommends that the ADR Commission provide guidance to Rule 31 listed mediators with a comment in the form of an ADR Commission policy.

Second, the Tennessee Bar Association expressed two concerns about Rule 31 training. In regard to Rule 31, §10(e), the Tennessee Bar Association suggested that the required Rule 31 training include "memorializing agreements resulting in mediation." The Tennessee Bar Association also expressed reservations about the ADR Commission accepting and approving a "strictly online graduate mediation course" for a training waiver in Rule 31, Section §17(d)(i). The Committee recommends that the Commission respond to the Court that the ADR Commission is in the process of reviewing the content requirements for Rule 31 training provided for in Rule 31, §17(c) and §17(d)(i), as they might apply to online mediation training, and modification of course content requirements, and requests that no action be taken on these concerns at the present time.



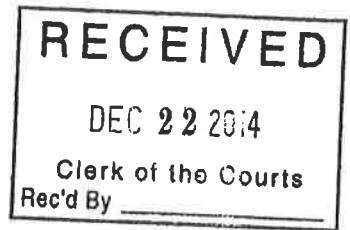
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Hayden D. Lait  
Chair, TADRC Rule & Policy Review Committee



**ACD Associates**

**Alan C. DeBusk**  
President



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December 20, 2014

James Hivner, Clerk  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN. 37219-1407

Re: Tenn. Sup. Ct. R. 31 – M2013-01612-SC-RL1-RL

Dear Mr. Hivner:

Please kindly accept this as my only comments regarding the aforementioned amendment proposal.

Paragraph (p) starting at line 55 strikes the words "initiated by the court" and similar needs to be done on line 64 for consistency.

No other comments are provided. Don't hesitate in contacting should you have any questions.

Kindest regards,

Alan C. DeBusk

---

P.O. Box 783  
Alcoa, TN. 37701-0783  
p. 865-984-8277  
f. 865-984-8277

[acdebusk@acdassociates.com](mailto:acdebusk@acdassociates.com)  
[www.acdassociates.com](http://www.acdassociates.com)  
[www.facebook.com/acdassociates](http://www.facebook.com/acdassociates)  
[www.linkedin.com/company/acd-associates](http://www.linkedin.com/company/acd-associates)

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

FILED  
2014 DEC 22 PM 2:29

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**IN RE PETITION OF THE ADOPTION OF AMENDED SUPREME COURT RULE 31**

APPELLATE COURT CLERK  
NASHVILLE

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**No. M2013-01612-SC-RL1-RL**

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**COMMENT OF THE TENNESSEE BAR ASSOCIATION**

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The Tennessee Bar Association (“TBA”), by and through its President, Jonathan O. Steen; Chair, TBA Dispute Resolution Section, Jackie Kittrell; General Counsel, Paul Ney; and Executive Director, Allan F. Ramsaur, files these comments in respect to the above matter.

**BACKGROUND**

In June of 2013 the Alternative Dispute Resolution Commission (“Commission”) filed a petition seeking amendment to several sections of Tenn. Sup. Ct. R. 31. On July 22, 2013 this Honorable Court issued an order soliciting written comments on the Commission’s proposed amendment. The TBA, among others, offered comments on the proposals. The Court asked the Commission to consider the written comments. Modifications to those proposed comments were published for comment on November 21, 2014. The deadline for submitting further comments was set as Monday, December 22, 2014.

The TBA applauds the efforts of the Commission to bring greater clarity and definition to the Rule 31 proposals. On the recommendation of the Dispute Resolution Section, the TBA offers some additional thoughts regarding the two items upon which the TBA commented in its January, 2014 comment.

**COMMENT ON TENN. SUP. CT. R. 31 §(10)(e)**

The Commission has deleted the term “scrivener” in Tenn. Sup. Ct. R. 31 §10(e) and now includes the statement that the neutral may assist the parties’ in memorializing the terms of the parties’ settlement at the end of the mediation. On behalf of our section, the TBA suggests that Commission comments be added to further illuminate what an ethical neutral does under different circumstances. In addition, we recommend that the training required in Tenn. Sup. Ct. R. 31 §17(c) include memorializing agreements resulting from mediation.

**COMMENTS ON EDUCATIONAL REQUIREMENTS OF  
TENN. SUP. CT. R. 31 §17(d)(1)**

The TBA again applauds the efforts of the Commission to strengthen its Rule by providing more clarity to the educational requirements and experience for equivalency of Commission-sanctioned educational programs. One question that remains and calls for further definition and guidance is whether a strictly online graduate mediation course could qualify under these provisions. Neutrals need to have theoretical and practical experience in dealing with interpersonal dynamics and interpersonal conduct. It is our sincere belief that personal contact is needed to

ensure that the neutral honed the requisite interpersonal skills. For that reason, the TBA believes that a graduate mediation course solely administered online might not provide sufficient training for neutrals.

The TBA appreciates the efforts of the Commission to provide greater clarity to its Rules, and we are hopeful that these comments will assist the Court and Commission in the adoption of the final rule.

Respectfully Submitted,

By: /s/ by permission \_\_\_\_\_  
JONATHAN O. STEEN (16519)  
President, Tennessee Bar Association  
Redding, Steen & Staton, PC  
464 North Parkway, Suite A  
Jackson, TN 38305  
(731) 660-2332

By: /s/ by permission \_\_\_\_\_  
JACQUELINE (JACKIE) KITTRELL (013578)  
Chair, Tennessee Bar Association  
Dispute Resolution Section  
Community Mediation Center  
912 S. Gay, Suite L-300  
Knoxville, TN 37902  
(865) 594-1879

By: /s/ by permission \_\_\_\_\_  
PAUL NEY (011625)  
General Counsel, Tennessee Bar Association  
Waddey & Patterson, P.C.  
1600 Division Street, Suite 500  
Nashville, Tennessee 37203  
(615) 242-2400

By: AM-FR

ALLAN F. RAMSAUR (5764)  
Executive Director,  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

AM-FR  
Allan F. Ramsaur

Dwight Aarons  
National Bar Association, William Henry  
Hastie Chapter President  
University of Tennessee College of Law  
1505 Cumberland Avenue, Room 363  
Knoxville, TN 37996-0681

Laura Baker  
Lawyers Association for Women Marion  
Griffin Chapter President  
Law Offices of John Day PC  
5141 Virginia Way, Suite 270  
Brentwood, TN 37027

Heidi Barcus  
Knoxville Bar Assoc. Immediate Past Pres.  
London & Amburn, P.C.  
607 Market Street, Suite 900  
Knoxville, TN 37902

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219

Tasha Blakney  
Knoxville Bar Association President-Elect  
Eldridge & Blakney PC  
P.O. Box 398  
Knoxville, TN 37901

Ben Boston  
Lawrence County Bar Assoc. President  
Boston, Holt, Sockwell & Durham PLLC  
P.O. Box 357  
Lawrenceburg, TN 38464

Kirk Caraway  
Memphis Bar Assoc. Immediate Past Pres.  
Allen, Summers, Simpson, Lillie &  
Gresham, PLLC  
80 Monroe Avenue, Suite 650.  
Memphis, TN 38103-2466

Paige Collins  
Hamblen County Bar Association President  
Terry, Terry & Stapleton Law Offices  
P.O. Box 724  
Morristown, TN 37815

Chad Cox  
Paris-Henry County Bar Assoc. President  
Clark and Cox PLLC  
104 North Brewer Street  
Paris, TN 38242-4006

Wade Davies  
Knoxville Bar Association President  
Ritchie, Dillard, Davies & Johnson PC  
P.O. Box 1126  
Knoxville, TN 37901

Imad Al-Deen Abdullah  
Nat'l. Bar Assoc., Ben Jones Chapter Pres.  
Baker Donelson Bearman Caldwell &  
Berkowitz  
165 Madison Avenue, #2000  
Memphis, TN 38103

Jeremy Ball  
Jefferson County Bar Association President  
P.O. Box 690  
Dandridge, TN 37725

Douglas Bates  
Hickman County Bar Association President  
Bates & Bates  
P.O. Box 1  
Centerville, TN 37033

Julian Bibb  
TN Board of Law Examiners President  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 900  
Nashville, TN 37219

Doug Blaze  
Dean  
UT College Of Law  
1505 W. Cumberland Avenue, Room 278  
Knoxville, TN 37996

Ted Burkhalter  
Blount County Bar Association President  
Burkhalter & Associates, PC  
405 Ellis Avenue  
P.O. Box 5255  
Maryville, TN 37802-5255

William Cockett  
Johnson County Bar Association President  
Smith & Cockett Attorneys  
247 West Main Street  
P.O. Box 108  
Mountain City, TN 37683-0108

Daryl Colson  
Overton County Bar Association President  
Colson & Maxwell  
808 North Church Street  
Livingston, TN 38570-1134

Terri Crider  
Gibson County Bar Association President  
Flippin, Atkins & Crider PC  
P.O. Box 160  
Humboldt, TN 38343

Jason Davis  
Marshall County Bar Association President  
Davis Law Firm  
113 W. Commerce Street  
Lewisburg, TN 37091

Colby Baddour  
Giles County Bar Association President  
A. Colbrook Baddour, Attorney at Law  
P.O. Box 296  
Pulaski, TN 38478-0296

Jamie Ballinger-Holden  
East TN Lawyers Assoc. for Women Pres.  
Baker Donelson Bearman Caldwell &  
Berkowitz PC  
265 Brookview Centre Way, Suite 600  
Knoxville, TN 37919

Syd Beckman Beckman  
Lincoln Memorial University  
Duncan School of Law Dean  
601 West Summit Hill Drive  
Knoxville, TN 37902

Mark Blakley  
Scott County Bar Association President  
Stansberry, Petroff, Marcum & Blakley PC  
2301 Jacksboro Pike, Suite 4C  
La Follette, TN 37766-2959

Suanne Bone  
Executive Director  
TN Assoc. of Criminal Defense Lawyers  
530 Church Street, #300  
Nashville, TN 37219

Neil Campbell  
Williamson County Bar Association  
President  
Neil Campbell Attorney at Law  
136 4th Avenue South  
Franklin, TN 37064-2622

Curt Collins  
Greene County Bar Association President  
C Collins Law Firm  
128 S. Main Street, Suite 102  
Greeneville, TN 37743-4922

Bratten Cook  
DeKalb County Bar Association President  
Bratten Hale Cook II  
104 N. 3rd Street  
Smithville, TN 37166

Creed Daniel  
Grainger County Bar Association President  
Daniel & Daniel  
115 Marshall Avenue  
P.O. Box 6  
Rutledge, TN 37861-0006

Michael Davis  
Morgan County Bar Association President  
415 N. King Street  
P.O. Box 925  
Wartburg, TN 37887-0925



Dawn Deaner  
Tennessee Lawyers Fund for Client  
Protection Chair  
Metropolitan Public Defender's Office  
404 James Robertson Parkway, #2022  
Nashville, TN 37219

William Douglas  
Lauderdale County Bar Assoc. President  
109 N. Main Street  
P.O. Box 489  
Ripley, TN 38063-0489

Amanda Dunn  
SETLAW President  
Luther Anderson PLLP  
P.O. Box 151  
Chattanooga, TN 37401-0151

Joseph Ford  
Franklin County Bar Association President  
McBee & Ford  
17 S. College Street  
Winchester, TN 37398

Shawn Fry  
Putnam County Bar Association President  
Qualls & Fry PLLC  
165 E. Spring Street  
Cookeville, TN 38501

James Gass  
Sevier County Bar Association President  
Ogle, Gass & Richardson PC  
P.O. Box 5365  
Sevierville, TN 37864

Kristin Green  
Bedford County Bar Association President  
300 E. Lane Street  
P.O. Box 461  
Shelbyville, TN 37162-0461

James Haywood  
Haywood County Bar Assoc. President  
Haywood Law, PLLC  
50 Boyd Avenue  
P.O. Box 438  
Brownsville, TN 38012-0438

Jason Holly  
Carter County Bar Association President  
Holly & Holly PLLC  
415 Hudson Drive  
Elizabethton, TN 37643-2881

Eric Hudson  
Federal Bar Assoc. Memphis Chapter Pres.  
Butler Snow LLP  
6075 Poplar Avenue, Suite 500  
Memphis, TN 38119

Mark Dessauer  
Federal Bar Association Northeast  
Tennessee Chapter President  
Hunter, Smith & Davis, LLP  
P.O. Box 3740  
Kingsport, TN 37664

Joanna Douglass  
Lawyers Association for Women President  
Tennessee Department of Human Services  
225 Martin Luther King Drive, #210  
Jackson, TN 38301

Vinh Duong  
Tennessee Asian Pacific American Bar  
Association President  
Waller Lansden Dortch & Davis LLP  
511 Union Street, #2700  
Nashville, TN 37210

Andrew Frazier  
Benton County Bar Association President  
Whitworth Law Firm  
P.O. Box 208  
Camden, TN 38320

Katharine Gardner  
Federal Bar Association Chattanooga  
Chapter President  
US District Court  
900 Georgia Avenue, Room 102  
Chattanooga, TN 37402-2216

Melanie Gober  
Executive Director  
Lawyers Association for Women Marion  
Griffin Chapter  
P.O. Box 190583  
Nashville, TN 37219

Chris Guthrie  
Vanderbilt University School of Law Dean  
131 21st Avenue South, Room 108  
Nashville, TN 37203-1181

Lucas Hobbs  
Bristol Bar Association President  
Elliott Lawson Minor PC  
110 Piedmont Avenue, Suite #300  
Bristol, VA 24201

Martin Holmes  
Federal Bar Assoc. Nashville Chapter Pres.  
Dickinson Wright, PLLC  
424 Church Street, Suite 1401  
Nashville, TN 37219

Nathan Hunt  
Montgomery County Bar Association Pres.  
Patton & Pittman  
109 S. Third Street  
Clarksville, TN 37040

Jade Dodds  
National Bar Association, S.L. Hutchins  
Chapter President  
Life Care Centers of America  
3001 Keith Street, NW 3480  
Cleveland, TN 37320-3480

Hilary Duke  
Dickson County Bar Association President  
Reynolds, Potter, Ragan & Vandivort, PLC  
210 East College Street  
Dickson, TN 37055

Matthew Edwards  
Cumberland County Bar Assoc. President  
Law Office of Matthew Edwards  
69 E. First Street, Suite 203  
Crossville, TN 38555-4575

Anne Fritz  
Executive Director  
Memphis Bar Association  
145 Court Avenue, Suite 1  
Memphis, TN 38103-2292

Sandy Garrett  
Board of Professional Responsibility  
Chief Counsel  
The Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027-5078

Charles Grant  
Nashville Bar Association President  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
211 Commerce Street, Suite 800  
Nashville, TN 37201-1817

Paul Hatcher  
Chattanooga Bar Assoc. President-Elect  
Duncan, Hatcher, Hixson & Fleenor PC  
1418 McCallie Avenue  
Chattanooga, TN 37404

Lela Hollabaugh  
Board of Professional Responsibility Chair  
Bradley Arant  
1600 Division Street, Suite 700  
Nashville, TN 37203

Lynda Hood  
Executive Director  
Chattanooga Bar Association  
801 Broad Street, Suite 420 Pioneer Bldg  
Chattanooga, TN 37402

Tiffany Johnson  
TN Alliance for Black Lawyers President  
QP Legal Research & Writing Services  
1067 Fleece Place  
Memphis, TN 38104-5620

Kevin Keeton  
Hawkins County Bar Association President  
Law Office of James N. Point  
115 E. Washington Street  
Rogersville, TN 37857-3317

Suzanne Keith  
Tennessee Association for Justice  
Executive Director  
1903 Division Street  
Nashville, TN 37203

Sarah Kennedy  
McMinn-Meigs County Bar Assoc. Pres.  
Jerry N. Estes Law Offices, PLLC  
296 W. Madison Avenue.  
Athens, TN 37303

Jeff Kinsler  
Dean  
Belmont University College Of Law  
1900 Belmont Boulevard  
Nashville, TN 37212-3757

Katherine Kroeger  
Anderson County Bar Assoc. President  
7th Judicial District Office of the Public  
Defender  
127 N. Main Street  
Clinton, TN 37716-3607

Karol Lahrman  
Executive Director  
Tennessee Lawyers Association for Women  
P.O. Box 331214  
Nashville, TN 37203

Ed Lancaster  
Tennessee Commission on Continuing  
Legal Education and Specialization Chair  
TFIC  
P.O. Box 998  
Columbia, TN 38402

Edward Lanquist  
Nashville Bar Association President-Elect  
Waddey & Patterson, PC  
1600 Division Street, Suite 500  
Nashville, TN 37203

William Lawson  
Unicoi County Bar Association President  
William B. Lawson, Attorney At Law  
112 Gay Street, Suite A  
P.O. Box 16  
Erwin, TN 37650-0016

Amber Lee  
Washington County Bar Assoc. President  
Lee Law Group, PLLC  
300 E. Main Street, Suite 159  
Johnson City, TN 37601

Peter Letsou  
Dean  
University of Memphis Cecil C.  
Humphreys School of Law  
1 North Front Street  
Memphis, TN 38103

William Locke  
Warren County Bar Association President  
General Sessions Judge  
Warren County Courthouse  
P.O. Box 228  
Mcminnville, TN 37111-0228

Matt Maddox  
Carroll County Bar Association President  
Attorney at Law  
P.O. Box 827  
Huntingdon, TN 38344

John Manson  
National Bar Association, Napier-Looby  
Chapter President  
Special Master 8th Circuit Court  
1 Public Square, 604 Metro Courthouse  
Nashville, TN 37201

Ian McCabe  
Loudon County Bar Association President  
Williams & McCabe  
329 Ellis Avenue  
Maryville, TN 37804-5840

Judy McKissack  
Executive Director  
Tennessee Commission on Continuing  
Legal Education  
221 Fourth Avenue North, Suite 300  
Nashville, TN 37219

Lee McVey  
Kingsport Bar Association President  
The McVey Law Firm  
108 E. Main Street., Suite 208  
Kingsport, TN 37660

Brandon Meredith  
Sumner County Bar Association President  
Phillips & Ingram  
117 E. Main Street  
Gallatin, TN 37066

Timothy Mickel  
Chattanooga Bar Association President  
Evans Harrison Hackett PLLC  
835 Georgia Avenue, Suite 800  
Chattanooga, TN 37402

John Miles  
Obion County Bar Association President  
John Miles, Atty.  
P.O. Box 8  
Union City, TN 38281

Robin Miller  
Chattanooga Bar Association Immediate  
Past President  
Spears Moore Rebman & Williams PC  
P.O. Box 1749  
Chattanooga, TN 37401

Darren Mitchell  
Campbell County Bar Assoc. President  
P.O. Box 375  
Jacksboro, TN 37757

Denny Mitchell  
White County Bar Association President  
Mitchell Law Office  
112 South Main Street  
Sparta, TN 38583

Mary Morris  
Federal Bar Association Mid-South Chapter  
Vice President  
Burch, Porter & Johnson, PLLC  
130 North Court Avenue  
Memphis, TN 38103

Nashville Bar Association  
150 4th Avenue N., Suite 1050  
Nashville, TN 37219

Bill Young  
Administrative Director  
Administrative Office of the Courts  
511 Union Street, # 600  
Nashville, TN 37219

David Myers  
Union County Bar Association President  
105 Monroe Street P.O. Box 13  
Maynardville, TN 37807-0013

Lynn Newcomb  
Cheatham County Bar Assoc. President  
Balthrop, Perry, Noe, Newcomb & Morgan  
102 Frey Street  
Ashland City, TN 37015

Ashley Ownby  
Bradley County Bar Association President  
Ashley L. Ownby Attorney at Law  
P.O. Box 176  
Cleveland, TN 37364-0176

Tommy Parker  
Memphis Bar Association President  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103

Thomas Parkerson  
Rutherford-Cannon County Bar Assoc.  
Parkerson Santel, PLLC  
121 E. Main Street  
Murfreesboro, TN 37130

Sherry Percival  
National Bar Association, Ballard Taylor  
Chapter President  
Percival Law Office, P.C.  
219 N. Parkway, Suite 1  
Jackson, TN 38305-2717

Jennifer Porth  
Fifteenth Judicial District Bar Assoc. Pres.  
J Stephen Brown PC  
224 W. Gay Street  
P.O. Box 792  
Lebanon, TN 37088-0792

Beverly Rayburn  
Maury County Bar Association President  
14 Public Square  
Columbia, TN 38401

Frances Riley  
Association for Women Attorneys  
Immediate Past President  
US Bankruptcy Court  
327 Central Cove  
Memphis, TN 38111

Tom Sherrard  
Nashville Bar Assoc. Immediate Past Pres.  
Sherrard & Roe PLC  
150 3rd Avenue S., #1100  
Nashville, TN 37201-2011

David Stanifer  
Claiborne County Bar Assoc. President  
Stanifer & Stanifer  
P.O. Box 217  
Tazewell, TN 37879

Stephanie Stuart  
Bristol Bar Association President  
Law Office of Stephanie Epperson Stuart  
1990 Hwy 394, Suite C  
Blountville, TN 37617

Shawn Trail  
Coffee County Bar Association President  
Shawn C. Trail, Attorney  
117 S. Spring Street  
Manchester, TN 37355

Matt West  
Jackson-Madison-Henderson County Bar  
Association  
Teel & Maroney PLC  
425 E. Baltimore Street  
Jackson, TN 38301

Jon Peeler  
Tennessee Association for Justice President  
401 Church Street  
L&C Tower, 29th Floor  
Nashville, TN 37219

Samuel Perkins  
Tennessee Association of Criminal Defense  
Lawyers President  
Perkins, Jones, & Associates  
80 Monroe, Suite 450  
Memphis, TN 38103-2520

Ann Pruitt  
Executive Director  
Tennessee Alliance for Legal Services  
1220 Vintage Place  
Nashville, TN 37215

Cheryl Rice  
TN Lawyers Assoc. for Women President  
Egerton, McAfee, Armistead & Davis, P C  
900 S. Gay Street, Suite 1400RIV  
Knoxville, TN 37902

Randall Self  
Lincoln County Bar Association President  
Randall E Self, Attorney At Law  
131 A Market Street E.  
P.O. Box 501  
Fayetteville, TN 37334-0501

Jim Smith  
Roane County Bar Association President  
305 W. Rockwood Street  
Rockwood, TN 37854

Jonathan Steen  
Tennessee Bar Association President  
Redding, Steen & Staton, PC  
464 North Parkway, Suite A  
Jackson, TN 38305

James Taylor  
Rhea County Bar Association President  
1374 Railroad Street, Suite 400  
Dayton, TN 37321-2211

James Tucker  
TN Defense Lawers Association President  
Manier & Herod PC  
150 4th Avenue N., Suite 2200  
Nashville, TN 37219

Mary Whitfield  
Assoc. for Women Attorneys President  
Shea Moskovitz & McGhee  
530 Oak Court Drive, Suite 355  
Memphis, TN 38117-3733

Beau Pemberton  
Weakley County Bar Association President  
Law Office Of James H. Bradberry  
109 North Poplar Street  
P.O. Box 789  
Dresden, TN 38225-0789

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners  
401 Church Street  
Nashville, TN 37219

Mario Ramos  
Tennessee Association of Spanish Speaking  
Attorneys President  
611 Commerce Street, Suite 3119  
Nashville, TN 37203

Jarod Richert  
Robertson County Bar Assoc. President  
Richert & Dilliha PLLC  
516 S. Main Street  
Springfield, TN 37172

Amber Shaw  
Tipton County Bar Association President  
Law Office of J. Houston Gordon  
114 W. Liberty Avenue, Suite 300  
Covington, TN 38019

Mike Spitzer  
Tennessee Bar Foundation Chair  
The Spitzer Firm  
19 Cedar Street  
Hohenwald, TN 38462

William Stover  
Tennessee Alliance for Black Lawyers  
Immediate Past President  
W. Stover, Attorney at Law  
500 Church Street, Suite 450  
Nashville, TN 37219-2370

Harriet Thompson  
Hardeman County Bar Assoc. President  
P.O. Box 600  
Bolivar, TN 38008

Tyler Weiss  
Monroe County Bar Association President  
Worthington & Weiss, P.C.  
409 College Street N., Suite 1  
Madisonville, TN 37354-3103

Derreck Whitson  
Cocke County Bar Association President  
Law Office of J Derreck Whitson  
P.O. Box 1230  
Newport, TN 37822

**John Lee Williams**  
Humphreys County Bar Assoc. President  
Porch Peeler Williams Thomason  
102 S. Court Square  
Waverly, TN 37185-2113

**Matthew Willis**  
Dyer County Bar Association President  
Ashley Ashley & Arnold  
P.O. Box H  
Dyersburg, TN 38025

**Marsha Wilson**  
Executive Director  
Knoxville Bar Association  
P.O. Box 2027  
Knoxville, TN 37901

**Tennessee Alternative Dispute Resolution Commission**

**Rule & Policy Review Committee Report**

**January 16, 2015**

In an Order dated November 21, 2014, the Tennessee Supreme Court solicited written comments to the ADR Commission's modified proposed amendments to Rule 31. The deadline for submission was December 22, 2014. Alan C. DeBusk and the Tennessee Bar Association submitted comments.

Chairman Howard Vogel submitted the public comments to the Rule & Policy Review Committee for review and for consideration of any recommendation to be made to the Commission and TSC. The Committee met by telephone conference on January 16, 2015, with committee members Suzanne Landers, George Brown, Tracy Shaw and chair Hayden Lait participating. Also on the call were Claudia Lewis and Howard Vogel. The following represents the comments and recommendations of the Committee in response thereto:

Attorney and Rule 31 listed general civil mediator Alan C. DeBusk recommended that the words "initiated by court" should also be struck in line 64 in paragraph (r) as it is in line 55 of paragraph (p) for consistency. (Line references are from the Appendix to the TSC Order, filed November 21, 2014) In response, the Committee recommends that the ADR Commission respond to the Court that it agrees with the suggestion of Mr. DeBusk.

The Tennessee Bar Association expressed three concerns about the ADR Commission's proposed changes to Rule 31, §10(e).

First, the Tennessee Bar Association requested that the ADR Commission add comments "to further illuminate what an ethical neutral does under different circumstances." The Committee recommends that the ADR Commission respond to the Court that the ADR Commission's proposed language is sufficient. Furthermore, if the ADR Commission's proposed language in Rule 31, §10(e) is approved, the Committee recommends that the ADR Commission provide guidance to Rule 31 listed mediators with a comment in the form of an ADR Commission policy.

Second, the Tennessee Bar Association expressed two concerns about Rule 31 training. In regard to Rule 31, §10(e), the Tennessee Bar Association suggested that the required Rule 31 training include "memorializing agreements resulting in mediation." The Tennessee Bar Association also expressed reservations about the ADR Commission accepting and approving a "strictly online graduate mediation course" for a training waiver in Rule 31, Section §17(d)(i). The Committee recommends that the Commission respond to the Court that the ADR Commission is in the process of reviewing the content requirements for Rule 31 training provided for in Rule 31, §17(c) and §17(d)(i), as they might apply to online mediation training, and modification of course content requirements, and requests that no action be taken on these concerns at the present time.



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Hayden D. Lait  
Chair, TADRC Rule & Policy Review Committee