

FILED

06/03/2024

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE

**IN RE: PETITION FOR THE ADOPTION OF AMENDED TENNESSEE
SUPREME COURT RULE 31(15)(A)(5)**

No. ADM2024-00714

ORDER

On May 16, 2024, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition asking this Court to consider adopting an amendment to Rule 31(15)(a)(5) of the Rules of the Tennessee Supreme Court. If adopted, the proposed amendment will provide a training waiver to mediators whose credentials have lapsed. The proposed amendment is set out in the Appendix to this Order.

The Court hereby publishes ADRC’s petition for public comment and solicits written comments on the proposed amendment from judges, lawyers, bar associations, members of the public, and all interested parties. The deadline for submitting written comments is August 2, 2024 (60 days). Written comments should reference the docket number above and may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
RE: Tennessee Supreme Court Rule 31(15)(a)(5)
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

The Court shall provide a copy of this Order and Appendix to Lexis Nexis and to Thomson Reuters. In addition, this Order and Appendix shall be posted on the Tennessee Supreme Court’s website.

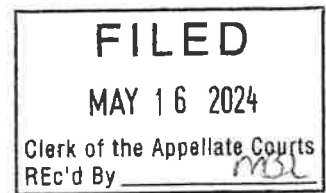
It is so ORDERED.

PER CURIAM

APPENDIX

Petition of the Alternative Dispute Resolution Commission for the Adoption of the Amended Tennessee Supreme Court Rule 31(15)(a)(5)

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IN RE:

PETITION FOR THE ADOPTION OF AMENDED
TENNESSEE SUPREME COURT RULE
31(15)(a)(5), PROVIDING A TRAINING WAIVER
FOR LAPSED MEDIATORS

No. ADM 2024-00714

**PETITION OF THE ALTERNATIVE DISPUTE RESOLUTION COMMISSION FOR
THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT RULE 31(15)(a)(5)**

The Alternative Dispute Resolution Commission (“ADRC” or “Commission”) respectfully petitions the Court to consider adopting an amendment to Rule 31(15)(a)(5) to permit the Commission the right to exercise discretion when considering a Rule 31 applicant’s training requirement. The Commission met on April 29, 2024, and approved revised language to state: *A mediator whose credentials have lapsed for failure to comply with CME requirements must re-apply to the ADRC for listing and must have taken all required training per section 14. If previous training was completed prior to six years from the re-application for listing, the training is no longer valid and the mediator must re-take the training pursuant to section 14 or apply for a training waiver.* The supporting reasons for revised language is set forth below.

I. Background

When section 15(a)(5) was drafted, the basis for the current language centered on the fact the ADCR program was faced with the continuing issue of mediators becoming listed, lapsing and applying to be listed again. The Commission recognized time passage and the ongoing development of mediation techniques should be considered for the applicants who remained lapsed for a great length of time. Lastly, the Commission believed the listing program should not been seen as a “come and go as you please” option. Therefore, there was an understanding the six (6) year training requirement could be used as a fair measurement when determining an

applicant's training status. In 2019, the AOC launched a digital platform used to maintain Rule 31 records for mediators. Staff communication and engagement improved the number of lapsed mediators. The passage of time between listings became more manageable and less mediators remained lapsed for long periods of time.

II. Current

From 2022 to early 2024, four (4) mediators submitted formal reconsideration requests to the enforcement of Rule 31 (15)(a)(5). Had the option of discretion been available, the Commission felt these cases would have been appropriate for a review. A specific example was the request of a mediator (Mediator) that lapsed in April 2021. The Mediator had renewed each year from 2007 to 2020. His mediation reports indicated he was regularly mediating one (1) to three (3) cases per week, and taught mediation at Belmont Law School and the Nashville School of Law. The Commission determined in 2021 the AOC staff issued ample renewal email reminders to all listed mediators for the 2021 renewal year. For reasons unclear to the Commission, the Mediator did not renew for the year 2021. In 2022, the Mediator realized he was no longer listed. He contacted AOC staff and learned he had to re-take his initial training as part of the new listing application process. The Mediator felt this training requirement was unfair. The Mediator requested the Commission to waive the training requirement.

What was clear to the Commission was the Mediator's failure to renew was a misunderstanding or accident - not a conscious choice. The Commission recognized the Mediator's point *that if he misses the deadline for completing his CLE hours he is not allowed to practice law but he can make them up without having to retake the bar exam*. A majority of the Commission agreed the existing requirement seemed a bit harsh when applied to these specific facts and yet recognized Section 15(a)(5) did not provide any other option but to deny the request.

After reviewing this request, as well as those mentioned above, the Commission agreed Section 15(a)(5) left no room for Commission discretion. The Commission found the six (6) year requirement was no longer a fair measurement and unanimously agreed to seek a rule change.

III. Technical Changes to Rule Language.

The purpose behind the ADRC's proposed change to Rule 31 is to allow the Commission the discretion as to this particular section of Rule 31. Set forth below is the revised Rule 31(15)(a)(5) which the Commission is asking the Court to approve.

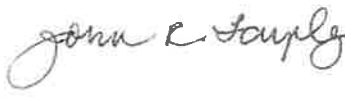
Proposed Amendment to Tennessee Supreme Court Rule 31 Section 15(a):

(5) A mediator whose credentials have lapsed for failure to comply with CME requirements must re-apply to the ADRC for listing and must have taken all required training per section 14. If previous training was completed prior to six years from the re-application for listing, the training is no longer valid and the mediator must re-take the training pursuant to section 14 or apply for a training waiver.

The ADRC respectfully petitions this Court to adopt the amendment to Rule 31(15)(a)(5) as proposed by the ADRC in this Petition.

Submitted this ___ day of ____, 2024.

Respectfully,

By: 

John Tarpley, Chairperson
Alternative Dispute Resolution Commission