

*WINDSOR*  
*LAW FIRM, PLC*

JOHN R. WINDSOR, JR.

*Admitted in TN, MS, LA*

June 23, 2006

JUN 26 2006

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

Re: Proposed Amended Rule 31

Dear Mr. Catalano:

I would like to offer my comments regarding one addition to the Rule and one issue I have with the current rule that is to continue under the Proposed Rule.

1. Under Sections 14 through 17, the continuation of the rule that a person appointed "appointed shall be a lawyer in good standing and admitted to practice in Tennessee for at least ten years" provides concern for me.

I have been admitted to practice law since 1991, but in another state, and have been at all times in good standing, and admitted in Tennessee since 2003. Why should I be presumed to be less qualified than a Tennessee attorney admitted, possibly, for less time than I have, but in another state? I am not convinced this even constitutionally permissible, but at a minimum there seems insufficient basis to continue this distinction.

2. Section 17, offers some distinction or preference to be a Mediator in family situations for CPAs. As a tax attorney, I have worked with many CPAs, and to presume they have special skills in family situations is fanciful, at best, but again has no basis I can see, for singling them out for this treatment under the rule, in this context.
3. Section 17 (h), intending to disrespect to Judges, but I disagree that without other justification that a sitting judge, with no qualification on time to have been on the bench, given the general demeanor and dynamics of the bench and courtroom, that there is sufficient basis to extend special treatment as to qualifications here.

Thank you for allowing me to comment, and for the fine work of continuing to improve Mediation in Tennessee.

Sincerely,

WINDSOR LAW FIRM, PLC

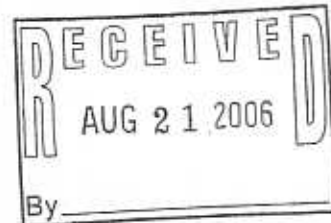


John R. Windsor, Jr.

# THE MEDIATION INSTITUTE

M2006-01303-SC-RL2-RL

August 21, 2006



## VIA FACSIMILE

Michael W. Catalano, Clerk  
Re: Proposed Rule 31  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Dear Mr. Catalano:

I am a Rule 31 Trainer and Listed Civil/Family Mediator, Specially Trained in Domestic Violence. I have the following comments concerning the proposed changes to Rule 31:

1. Section 2, Definitions, Part (o): For clarification and consistency, I suggest adding at the end (after "attorneys"): ", in accordance with sections 14, 15 and 16."

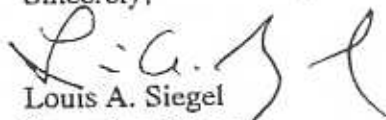
2. Section 5, Reports, Part (b): Regarding interim reports, I suggest changing "every 30 days" to "every 60 days unless otherwise directed by the court." In my view, this will eliminate a good deal of unnecessary paperwork.

3. Section 17, Rule 31 Mediators: The one specific mention of confidentiality as a training requirement is in Part (c)(3)(D) (also, see, (c)(3)(E)). However, I believe civil as well as family mediators need to be made aware of the abuse exceptions to confidentiality; and these should include not only child abuse and elderly abuse, but also abuse of disabled adults (i.e., see, TCA §§71-6-101, 71-6-101(b)(1) and 71-6-106.) I suggest adding the references to reporting abuse of disabled adults, and moving that section to Part (c)(1).

4. Section 18, Additional Obligations of Rule 31 Mediators, Part (c) Inactive Status: This section is somewhat confusing. Why distinguish 'applying' for inactive status (c)(1) from automatic inactive status (c)(2)? Is the CME requirement for (c)(1) inactives more onerous than for others? Do those falling under (c)(2) have to pay the annual fee even though inactive?

Thank you for considering these comments. Please feel free to be in touch if I can offer any additional information.


Sincerely,

  
Louis A. Siegel  
Executive Director

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<b>TO:</b>	Michael Catalano Clerk	<b>RE:</b>	Proposed Rule 31
<b>From:</b>	Louis Siegel Mediator	<b>DATE:</b>	August 21, 2006
		<b>TIME:</b>	9:50 AM

Urgent     Reply ASAP     Please comment     Please review     For your information

Total pages, including cover: 2

## COMMENTS

Fax to: 532-8757

**Thank you!**

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August 21, 2006

The Honorable Michael Catalano  
Re: Proposed Amended Rule 31  
Clerk, Tennessee Supreme Court  
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401 Seventh Avenue North  
Nashville, TN 37219

IN RE: PROPOSED AMENDED RULE 31,  
RULES OF SUPREME COURT

Dear Mike:

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

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

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Larry D. Wilks, President  
Tennessee Bar Association  
Gail Vaughn Ashworth, General Counsel  
Mary Rose Zingale, Administrative Office of the Courts  
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IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**

2006 AUG 21 PM 3:32

APPELLATE COURT CLERK  
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IN RE: PROPOSED AMENDED RULE )  
31, RULES OF THE TENNESSEE )  
SUPREME COURT )  
)

No. M2006-01303-SC-RL2-RL

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**COMMENT OF THE TENNESSEE BAR ASSOCIATION**

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**INTRODUCTION**

The Tennessee Bar Association (“TBA”), by and through its President, Larry D. Wilks; General Counsel, Gail Vaughn Ashworth; and, Executive Director, Allan F. Ramsaur, urges the adoption of certain proposed amendments and modification of other proposed amendments to Tennessee Supreme Court Rule 31 (“Rule”).

**BACKGROUND**

On June 22, 2006, this honorable Court published for comment proposed amendments to Tennessee Supreme Court Rule 31 proposed by the Alternative

Dispute Resolution Commission. The TBA promptly distributed the proposed amendments to its various interested entities and its Executive Committee, meeting on August 14, 2006 authorized the filing of this comment.

**1. RULE 31 NEUTRALS OTHER THAN RULE 31 MEDIATORS  
SHOULD BE LICENSED ATTORNEYS.**

The proposed amendment to Tenn. Sup. Ct. R. 31 § 2 (o) proposes to modify the definition of Rule 31 neutral to clarify that Rule 31 neutrals other than the mediators are required to be licensed attorneys. The TBA endorses this clarification. The application of Rule 31 is confined to court-annexed alternative dispute resolution proceedings. As stated in Section 1 of the rule, the rule does not “affect or address the general practice of alternative dispute resolution in the private sector outside of the ambit” of proceedings which are annexed to a court. Case evaluation, mini-trial, non-binding arbitration, and summary jury trial proceedings all contemplate that the neutral presides over the proceeding and may actually issue a recommended decision. The training, skills, and experience of a licensed attorney are necessary to fulfill this role.

**2. THE DEFINITIONS OF “MEDIATION” AND “MEDIATOR”  
SHOULD REFLECT THAT THE PROCESS IS AN EFFORT TO  
REACH A MUTUALLY ACCEPTABLE AGREEMENT.**

The proposed amendments recommend adoption of a new subsection 2(g) to add a definition of mediator and continue the definition of mediation as a informal process in which a neutral conducts discussions. Both of these definitions seem to indicate that the discussions must result in a mutually acceptable agreement.

However, experience dictates that mediation can only engage in efforts to enable a mutually acceptable agreement among the parties and may not reach a satisfactory conclusion. Therefore, the TBA recommends that the definition of mediator and mediation be modified so they read as follows:

(g) “Mediator” is a neutral who conducts discussions among disputing parties in an effort to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(h) “Mediation” is an informal process in which a neutral conducts

discussions among disputing parties in an effort designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

**3. GENERAL DIRECTIVES FROM THE TRIAL COURT  
REGARDING RULE 31 ADR PARTICIPATION SHOULD BE  
ADOPTED BY LOCAL RULE RATHER THAN STANDING  
ORDER OF REFERENCE.**

The Alternative Dispute Resolution Commission recommends amendment to Tenn. Sup. Ct. R. 31 § 3(b), § 3(c) and § 4(a) to require that a directive that certain types of matters be referred to alternate dispute resolution be accomplished by a local rule rather than through a standing order of reference. The TBA heartily endorses this proposal. The adoption of local rules to address reference of matters to alternative dispute resolution is worthwhile because it gives notice to the bar and the parties as to the practice in each jurisdiction, provides greater uniformity as to results from judge to judge, and offers the opportunity for input from the public and the bar under Tennessee Supreme Court Rule 18.



**4. FAMILY LAW MEDIATORS SHOULD CONTINUE TO BE  
REQUIRED TO RECEIVE CONTINUING TRAINING IN FAMILY LAW.**

Under the proposed Rule 31 § 18 the ADRC proposes to delete the present requirement that family law mediators complete six (6) hours of training every two (2) years including at least one (1) hour of ethics and three (3) hours of family law training and to allow a Rule 31 mediator to substitute education in psychiatry, psychology, counseling, social work, education or accounting for the family law requirement. The TBA opposes this change. Rule 31 mediators who are not lawyers play a valuable role in assisting clients to arrive at a mutually acceptable solution to their family legal dispute. In so doing, the mediator must be able to articulate to the parties the parameters within which their settlement will lie. Only through constant updating and adequate training in family law changes can non-lawyers adequately serve the public. The TBA takes no position on requiring three hours of mediation training, but does believe that family mediators, particularly because they may be non-lawyers, should be required to obtain at least three (3) hours of family law training every two (2) years.

**5. REPORTS REQUIRED OF RULE 31 MEDIATORS SHOULD BE  
NARROWLY SUBSCRIBED SO AS NOT TO REQUIRE  
SUBMISSION OF CONFIDENTIAL INFORMATION.**

The ARDC recommends adoption of a new provision in Rule 31 § 18(e) to require reports by a mediator in order that the commission may evaluate client satisfaction, quality of results, and effect on case management. The proposal seems to indicate that the ARDC may request any data it needs to conduct the evaluation. This new rule should limit the reports to the information necessary for the commission to fulfill its responsibilities and should not include any information otherwise made confidential. To accomplish this purpose the TBA suggests the following language with respect to Rule 31 § 18(e):

In addition to compliance with Section 5 of this Rule, upon the request of the ADRC to assist it in fulfilling its responsibilities under Section 19(a)(8), Rule 31 Mediators shall be required to submit to the ADRC, with respect to mediations that they have conducted, whether under Rule 31 or otherwise, non-confidential information concerning participant satisfaction and whether or not a dispute was settled. The report forms will be available on the AOC website and from the AOC.

**6. WITH CONSENT OF THE PARTIES, THE COURT BEFORE WHOM THE MATTER IS PENDING SHOULD BE ELIGIBLE TO SERVE AS A PRESIDING NEUTRAL IN SUMMARY JURY TRIALS.**

The proposed amendments to the rule give new emphasis to summary jury trials as an alternative dispute resolution mechanism. The TBA recommends that the provisions with regard to summary jury trials explicitly permit the court before whom the matter is pending to employ a summary jury trial when the parties consent to the action. To accomplish this change the TBA recommends that the following sentence be inserted between the first and second sentence in Tenn. Sup. Ct. R. 31 § 24.

The court before whom the matter is pending may, with consent of the parties, act as the presiding neutral in a summary jury trial.

RESPECTFULLY SUBMITTED,

By: /s/ by permission

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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 on August 21, 2006.

AM-FR  
Allan F. Ramsaur

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