



# ADR NEWS

A publication of the Tennessee Alternative Dispute Resolution Commission

Spring 2017 Volume 17, Issue 1

Conflict Resolution  
General Negotiation  
Mediation  
Tennessee Mediator  
Dispute Rule 31  
Family  
Solutions  
Civil  
Agreement

## TENNESSEE

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- Justice Sharon G. Lee

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- Patricia Mills

#### **Programs Assistant**

- Caitlin E. Vasser

*Send questions and comments to:*

#### **Tennessee ADR Commission**

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## IMPORTANT NEWS

For a list of approved Continuing Mediation Education courses, please see page 3 or go to:

<http://www.tncourts.gov/programs/mediation/resources-mediators/continuing-mediation-education>.

To file online mediation reports, go to:

<http://www.tncourts.gov/programs/mediation/resources-mediators>.

If you have forgotten your username and password needed to submit an online mediation report, please contact Caitlin Vasser, Programs Assistant, at (615) 741-2687 or by email at [caitlin.vasser@tncourts.gov](mailto:caitlin.vasser@tncourts.gov).

## IMPORTANT ADR DATES

**April 25, 2017**-ADR Commission Meeting, AOC Office, Nashville

**May 30, 2017**-Rule 31 Mediator Applications Deadline for ADR review on July 25, 2017

**July 25, 2017**-ADR Commission Meeting, AOC Office, Nashville

## FAST STATS:

There were 1,563 mediations reported in the 4<sup>th</sup> Quarter of 2016. Of those mediations, 65.1% had all issues resolved; 8.1% had issues that were partially resolved; and 26.2% had no issues resolved. There were 107 pro bono mediations and 10 additional court ordered pro bono mediations reported. These mediation statistics were compiled from online mediation reports submitted by Rule 31 listed mediators per ADR Policies 10 and 22. Quarterly statistics can be found on the AOC website at:

<http://www.tncourts.gov/programs/mediation/resources-mediators> in the "Submit Rule 31 Report" section.

## SUMMARY OF ADR COMMISSION MEETING

The ADR Commission met on January 24, 2017 to consider 51 new mediator applications, discuss Committee reports, and prepare for its April Retreat scheduled April 25, 2017. The April Retreat will be focused on discussing listed mediator concerns, reviews of each Committee's feedback of assigned Rule sections, and a thorough review of Rule 31 to determine proposed revisions. The Ethics Advisory Committee has issued an Advisory Opinion and also has received an additional request for an Advisory Opinion that the Committee plans to release in the next newsletter. The Training/Education Committee is developing the program for its annual ADR Workshop which will be held at Lipscomb University's Ezell Center on Friday, October 13, 2017.

**Congratulations to the following newly Listed Rule 31 Mediators! These mediators were approved for listing at the ADRC Quarterly Meeting on January 24, 2017.**

### FAMILY

- Ms. Stephanie A. Boiano
- Ms. JennyLynn Carey
- Ms. Sue Hynds Dunning
- Ms. Tiffany D. Hagar
- Ms. Mandy M. Hancock
- Ms. Sukanda M. Langley
- Mrs. Donna Miller
- Mr. Kenneth James Phillips
- Mr. Raymond Freeman Runyon
- Mrs. Amanda Raye Thornton
- Ms. Sarah M. Turner
- Ms. Megan L. Williams
- Mr. David R. Yoder
- Ms. Katie Mathews Zipper

### GENERAL CIVIL

- Ms. Mariann Tait Barksdale
- Mr. Ur Barzel
- Mr. Robert T. Bateman
- Mrs. Allison L. Bussell
- Mr. Jonathan J. Cole
- Mr. Stephen Childers Crofford
- Ms. Marsha Harrell Crownover
- Ms. Joy P. DuVoisin
- Mr. Steve Erdely IV
- Ms. Janet Schwab Gurwitch
- Ms. Tyna B. Hector
- Mrs. Antonio (Ann) Hunt
- Mr. J. Wallace Irvin
- Ms. Susan Tucker Jones
- Mr. Reggie E. Keaton
- Ms. Teresa A. McCuiston
- Mr. Michael G. Nabors, Jr.
- Dr. Vicki Nord Petzko
- Mr. George A. Rowlett
- Mr. Gary Lee Smith
- Dr. Sabrina L. Upton
- Ms. Nancy A. Vincent
- Mr. David J. Weissman
- Mr. Bare M. Yogol

### GENERAL CIVIL/FAMILY

- Mrs. Elizabeth A. Burris
- Mr. Billy L. Clark\*
- Hon. Vicki Hodge Hoover\*
- Mr. Jordan B. Osborn
- Dr. Faye Porter Taylor\*
- Mr. Chadwick B. Tindell
- Mr. Larry Wallace\*

\*Specially Trained in Domestic Violence Issues

## **We Would Like to Hear From You!**

In an effort to encourage education and communication between and for Rule 31 listed mediators, the ADRC accepts proposed article submissions from Rule 31 listed mediators and others in the *ADR News*. All submissions may or may not be published and are subject to editing according to the Program Manager's discretion. If you are interested in submitting an article for possible publication in the *ADR News*, please contact the AOC Programs Manager at (615) 741-2687.

# NEWS AND EVENTS

## LAW & INNOVATION ACTIVITIES

### MUSIC CITY LEGAL HACKERS

A "bootcamp" is scheduled for Saturday, February 25 from 9:00 am to 12 pm. The "bootcamp" will share with the numerous non-profit and pro bono legal service providers across the state how to consider, prepare and present their needs for efficiency and cost reduction solutions to the Music City Legal Hackers on Saturday, April 8. Teams of lawyers, technologists, system engineers, analysts and developers will work to help solve the problems presented.

This is being sponsored by numerous legal tech companies, law firms and media publishers under the auspices of the VLS Program on Law and Innovation. See: <https://law.vanderbilt.edu/academics/academic-programs/law-and-innovation/activities.php>

For questions please contact: Larry W. Bridgesmith  
Adjunct Professor of Law Program on Law & Innovation  
615 585 7563

### HELP4TNDAY

The Tennessee Supreme Court is sponsoring a public service day on Saturday, April 1, 2017. The concept is to have events taking place across the state on or near April 1st (generally within 2 weeks prior and 2 weeks after) to provide civil legal help to disadvantaged Tennesseans.

The primary goal of this initiative is to raise public awareness of the on-going need for free and low cost civil legal services for disadvantaged Tennesseans and highlight the groups that serve them by bringing statewide attention from media and sources that do not normally cover civil legal aid and access to justice programs. The hope is that the Help4TNDay will increase the pool of available volunteers and help a large number of disadvantaged Tennesseans in the process.

Other existing partners in this initiative include the Tennessee Bar Association, the Tennessee Alliance for Legal Services, Legal Aid of East Tennessee, Legal Aid of Middle Tennessee & the Cumberland, Memphis Area Legal Services, and West Tennessee Legal Services.

Examples include hosting a pro bono civil legal advice clinic, offering a pro bono attorney training, or putting on a public education seminar. **OR** If you already have events planned on or near April 1, please allow us to include them as part of this public awareness campaign.

The ATJ Commission and AOC are creating promotional flyers and other materials you can use to advertise your event. If you wish to develop a new event, we have numerous resources available which you can use and will be happy to help you.

Please email as soon as possible if your organization is interested in hosting an event or if you'd like to volunteer at an existing event. Please provide the place, time, and primary contact's email and phone number. Please submit information to the email address created specifically for this initiative, [Help4TNDay@tncourts.gov](mailto:Help4TNDay@tncourts.gov).

Questions?

Contact Anne-Louise Wirthlin, Access to Justice Coordinator  
Administrative Office of the Courts  
[anne.louise.wirthlin@tncourts.gov](mailto:anne.louise.wirthlin@tncourts.gov)  
615-741-2687

## NAFCM & JAMS MINI-GRANT: ELDER POPULATION & CARE ISSUES

The JAMS Foundation and National Association for Community Mediation (NAFCM) are pleased to announce the fourth Community Mediation Mini-Grant Program ("Program"). The purpose of this year's Program is to fund the development and refinement of innovative and emerging community mediation center services which will address services for the elder population and care issues. These services should be able to be replicated by community mediators throughout the country as a path for sustainability and growth for the field of community mediation, as well as to inform the development of training, evidence-based strategies, policy and research at the national level as well.

An important change this year is the introduction of the Solicitation of Interest step. This step is designed to allow you to submit a two to three-page short answer proposal for review. There is no request for attachments, a structured budget or an in-depth justification of your work. We hope by adding this step, we are able to provide clear and quick direction if this process and focus is a good fit. You can find the Solicitation of Interest (SI) by clicking here, or going to [http://c.ymcdn.com/sites/www.nafcm.org/resource/resmgr/news\\_updates/SI\\_2017\\_External.pdf](http://c.ymcdn.com/sites/www.nafcm.org/resource/resmgr/news_updates/SI_2017_External.pdf).

The focus areas for this \$12,000/year for up to two-year grant include:

- Priority will be given to projects that focus on developing conflict resolution skills that will assist aging/elder populations to address issues arising between them and caregivers (individuals or institutions). This focus incorporates Hallmark 3, Hallmark 4, Hallmark 6, & Hallmark 7.
- Priority will be given to projects in which the aging population plays a significant or substantive role in the delivery of the process. This focus incorporates Hallmark 2.
- Priority will be given to projects that arise from grassroots efforts, comprised of a strong base of diverse stakeholders, who are representative of their community of aging individuals and caregivers. This focus incorporates Hallmark 1, Hallmark 5, Hallmark 8, and Hallmark 9.

Important dates if you are considering possible participation in this year's offer are:

Interested organizations are required to submit a 1-3-page Solicitation of Interest (SI) (using the guidelines on the following page) to NAFCM no later than 11:59 PM local time of the organization's legal/main location, Monday, March 13, 2017 to [admin@nafcm.org](mailto:admin@nafcm.org).

If our invited to write a full proposal you will be notified by Friday, April 14, 2017. An RFP review webinar will be offered on Wednesday, April 26, 2017 at 2 PM ET. The link for attendance will be sent to those applicants who are invited to submit a full proposal.

Full proposals (with a required application protocol provided upon notification) will be due to the NAFCM Grant review committee no later than 11:59 PM local time of the organization's legal/main location on Tuesday, June 20, 2017.

Notifications of the final decision will be made in late Summer 2017.

If you have any questions, please write to [dgmawn@nafcm.org](mailto:dgmawn@nafcm.org).

## NEW ADR INN OF COURT IN MEMPHIS

Attorney Kimberly Schreiber, one of our Rule 31 Trainers and a Listed Mediator, recently founded the Memphis ADR American Inn of Court. The Inn will be the second ADR specialty Inn of Court in the United States. Retired Tennessee Supreme Court Justice Janice Holder, Dean Peter Letsou of the University of Memphis Cecil C. Humphreys School of Law, and Circuit Court Judge Rhynette Hurd have all joined Ms. Schreiber on the Organizing Board. The Inn will have a particular focus on furthering the skills and practice of mediation throughout Tennessee and will provide opportunities for mentorship. The organizing board is in the process of selecting the founding members and is very excited about the professional growth opportunities for prospective members. Ms. Schreiber was fortunate enough to attend a recent meeting of the Justice Marie L. Garibaldi American Inn of Court in New Jersey and is being assisted by their Executive Director Robert E. Margulies.

<u>DATE</u>	<u>COURSE NAME</u>	<u>TYPE OF CREDIT</u>
<b>AENZI</b>		
<b>Ongoing</b>	<a href="#"><u>Effectively Mediate Medical Malpractice Cases Ethical Mediation Course</u></a>	<b>1 Hour Mediation Ethics</b>
	<a href="#"><u>A Domestic Relations Mediation Refresher Course</u></a>	<b>1 Hour Continuing General Education or Family Law or Mediation Ethics</b>
	<a href="#"><u>Effectively Mediate with Motivational Interviewing</u></a>	<b>2 Hours Continuing General Education or Mediation Issues</b>
	<a href="#"><u>Mediate with Emotional Intelligence</u></a>	<b>2 Hours Mediation Ethics</b>
	<a href="#"><u>What Shape is Your Triangle?</u></a>	<b>2 Hours Mediation Issues</b>
<b>CONSENSUS PROFESSIONAL DEVELOPMENT - LAW &amp; MEDIATION PRACTICE PROFESSIONALISM</b>		
<b>10/13/16 - 10/12/17</b>	<a href="#"><u>Critical Thought &amp; Practice Diversity in the Workplace Stress Management Time Management for Peak Performance Workplace Bullying Workplace Etiquette Workplace Harassment Workplace Safety Workplace Violence &amp; Prevention</u></a>	<b>2 Hours General Continuing Education</b>
	<a href="#"><u>Anger Management Co-Worker Conflict Resolution Employee Peer Mediation Ethics for the Office Environment Meaningful Listening Mindfulness 1: EIEQ Mindfulness 2: A1 Negotiating for Resolution Problem-Solving &amp; Decision Making Resolving Conflict with Difficult People</u></a>	<b>2 Hours Mediation Ethics</b>
	<a href="#"><u>Strategic Communication</u></a>	<b>1.25 Mediation Issues &amp; .75 Continuing General Education</b>
	<a href="#"><u>Leading with Influence and Persuasion</u></a>	<b>1.25 Hours Mediation Issues &amp; .75 Mediation Ethics</b>
<b>KNOXVILLE BAR ASSOCIATION</b>		
<b>11/16/16 - 11/15/17</b>	<a href="#"><u>Techniques to Avoid Impasse</u></a>	<b>1 Hour Mediation Ethics</b>
<b>11/8/16 - 11/7/17</b>	<a href="#"><u>Mediating a Family Law Case: The Good, The Bad and The Ugly</u></a>	
<b>12/20/16 - 12/19/17</b>	<a href="#"><u>Tax Issues In Divorce</u></a>	
<b>NASHVILLE BAR ASSOCIATION</b>		
<b>3/2/2017</b>	<a href="#"><u>When Four Aces Don't Equal A Winning Hand</u></a>	<b>2 Hours Family Law</b>
<b>NASHVILLE CONFLICT RESOLUTION CENTER</b>		
<b>3/14/2017</b>	<a href="#"><u>Pros and Cons of Same - Room Mediation</u></a>	<b>1.25 Hours Mediation Ethics</b>
<b>ROSEMARY FRANK FINANCIAL</b>		
<b>11/14/16 - 11/13/17</b>	<a href="#"><u>Avoid Financial Pitfalls in Divorce Cases</u></a>	<b>2 Hours Continuing General Education or Family Law</b>
<b>TENNESSEE ASSOCIATION OF PROFESSIONAL MEDIATORS</b>		
<b>3/3/2017</b>	<a href="#"><u>The Conflict Paradox: The Dilemmas and Contradictions that Define our Work (and our Lives).</u></a>	<b>4.75 Hours of Mediation Issues &amp; 1.25 Hours of Mediation Ethics</b>
<b>On Demand</b>	<a href="#"><u>Mock Mediation of an Employment Dispute</u></a>	<b>1.33 Hours Mediation Issues</b>
<b>TENNESSEE BAR ASSOCIATION</b>		
<b>11/2/16 - 11/1/17</b>	<a href="#"><u>Creating and Managing Productive Relationships in Mediation</u></a>	<b>1 Hour Mediation Ethics</b>
<b>7/18/16 - 7/17/17</b>	<a href="#"><u>ADR 2016: Construction Dispute Mediation</u></a>	
<b>11/29/16 - 11/28/17</b>	<a href="#"><u>ADR 2016: Ethics ADR 2016: Neuroscience</u></a>	
<b>11/29/16 - 11/28/17</b>	<a href="#"><u>Mediation in Juvenile Court</u></a>	<b>2 Hours Mediation Ethics or Family Law</b>
<b>TENNESSEE TRAIL LAWYERS ASSOCIATION</b>		
<b>4/6/2017</b>	<a href="#"><u>2017 Domestic Law Forum - Staying Out of Trouble</u></a>	<b>3.33 Hours Family Law &amp; 3.42 Hours Continuing General Education</b>

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2017-0001

The Alternative Dispute Resolution Commission received a request for an advisory opinion from a Tennessee Rule 31 Listed Mediator. The request has been modified for purposes of response within the context of Rule 31. The Ethics Advisory Opinion Committee, consisting of George Brown, Bill Young, and Virginia Story, Chair of the Committee, reviewed the request and issued the following opinion.

Factual Background:

Parties and counsel meet in a post-divorce Rule 31 Mediation with a Rule 31 Mediator to come to an agreement about a parenting issue. An agreement is reached and typewritten by the Mediator with the assistance of both parties and counsel for both parties. The Agreement is signed by both parties at the mediation.

Later, on the same day the mediation concluded, Party A leaves a voicemail for the Mediator that Party A is unhappy with the Agreement and wants to withdraw the Agreement. Party A also advises that Party A's counsel of Party A's unhappiness with the settlement and does not wish to proceed with the Settlement Agreement.

Inquiry 1: Should the Mediator file the required report of Mediator per Rule 31 § 5(a) and state that the matter "did settle" at the mediation despite one party's notification that the party no longer agrees to the settlement agreement?

Yes, the Mediator should file the required Report of Mediator and state that the matter "did completely settle" at the mediation according to TSC Rule 31 § 5(a).

Rule 31 § 5(a) addresses the Rule 31 Neutral's requirement to submit a final report to the court and provides the items the report shall include. Rule 31 § 5(a) states:

"The Order of Reference shall require the Rule 31 Neutral to submit a final report pursuant to Rule 5.06, Tenn. R. Civ. P., with the court at the conclusion of the Rule 31 ADR Proceeding. *The final report shall state only:* (i) which parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs. The report shall be submitted within the time specified by the court in the Order of Reference. In the event the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the initial meeting with the parties, or within the time period specified by the court." [emphasis added]

If a party repudiates after the conclusion of the mediation, the party's attorney or the party if self-represented may present this information to the court. The mediator serves as a neutral and should not be involved in the ongoing attorney/client relationship.

Inquiry 2: Does Rule 31 § 5(a) prohibit the Mediator from filing the Mediator's report with the court and stating that "Parties executed a Settlement Agreement at the Mediation session" despite one party's notification that it no longer agrees to the settlement agreement?

No, Rule 31 does not prohibit the Mediator from filing the Mediator's report with the court based on the factual background. In fact, Rule 31 § 5(a) mandates that the Mediator fill out the Report of Mediator in its entirety and file the Report of Mediator with the Court.

Per Rule 31 § 5(a), the Mediator's report shall state the following:

- "(i) which parties appeared and participated in the Rule 31 ADR Proceeding;
- (ii) whether the case was completely or partially settled; and
- (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs."

Date: January 24, 2017



Virginia Story, Chair of the TADRC Ethics

Advisory Opinion Committee

George Brown

Bill Young