

**IN THE TENNESSEE ALTERNATIVE DISPUTE  
RESOLUTION COMMISSION**

**ADVISORY OPINION  
NO. 2010-0002**

The ADRC has received a request from a mediation trainer with approved curriculum for an advisory opinion concerning confidentiality pertaining to an assault occurring during a mediation session. The request was two-fold. The first question being whether the mediator may provide a statement to law enforcement or be called as a witness if an assault is committed against someone other than the mediator. The second being whether the mediator may seek remedy without jeopardizing confidentiality when the mediator is the victim of an assault during the mediation.

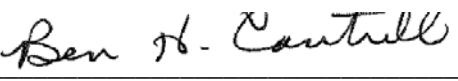
As to the first question, it is the Committee's opinion that the mediator may provide a statement to law enforcement and testify if called upon to be a witness. The mediator is not divulging information regarding the underlying dispute but only collateral issues. Section 10(d) of Rule 31 states:

Rule 31 Neutrals shall preserve and maintain the confidentiality of all information obtained during Rule 31 ADR Proceedings and shall not divulge information obtained by them during the course of Rule 31 ADR Proceedings without the consent of the parties, except as otherwise may be required by law.

The mediator must be careful and moderate his statement and testimony to avoid disclosing information pertaining to the underlying dispute and may only testify as to the assault.

It is the Committee's opinion that if the mediator is the victim of an assault, he may seek remedy without violating confidentiality. The mediator is revealing only collateral issues and not confidential information obtained during the course of the mediation. Again, the mediator's testimony must be moderated to prevent matters of the case that is being mediated from being disclosed.

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Date      July 27, 2010

  
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Committee Chair