

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2014-0001

The Alternative Dispute Resolution Commission received a request from a mediator for an advisory opinion, regarding various issues relating to the scope of Rule 31. The Ethics Advisory Opinion Committee, consisting of Linda Nettles Harris, Virginia Story, Howard H. Vogel and Tracy Shaw, Chair of the Committee, reviewed the request and issued the following opinion:

The questions posed were:

1. Does Rule 31 use of the phrase “licensed attorneys” mean State of Tennessee licensed attorneys only?
2. Does Rule 31 use of the phrase “any lawyer in good standing” mean any State of Tennessee licensed lawyer in good standing only?
3. Does Rule 31 allow the parties to the mediation or arbitration to waive the requirements for a licensed attorney or licensed lawyer in good standing?
4. In non-ADR proceedings, including the general and private practice of alternative dispute resolution, may mediations and arbitrations be conducted by individuals who are not attorneys licensed by the State of Tennessee?

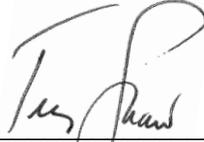
For response to the first question, Section 1 of TSC Rule 31 provides, that Rule 31 does not affect or address the general practice of ADR in the private sector outside the ambit of Rule 31. Rule 31 applies to eligible civil actions, conducted by a Rule 31 mediator. Relating to mediations, any mediation conducted by a Rule 31 mediator is considered to be an ADR Proceeding, and therefore, covered by the provisions of Rule 31. See Section 2(n). A licensed attorney from a jurisdiction, other than Tennessee, may qualify to become a Rule 31 approved mediator per Section 17(a)(2).

For response to the second question, pursuant to the provisions of Section 17(a)(2), the lawyer applicant for Rule 31 approval by the ADRC, must be in good standing in all states in which she or he is licensed.

For response to the third question, it is not necessary to be a licensed attorney to be a Rule 31 mediator. The parties may select a non-Rule 31 mediator, if they choose to do so. As for arbitrations, Rule 31 relates to non-binding arbitrations, which is a defined phrase in Rule 31, Section 2(l). A Rule 31 non-binding arbitration would be conducted by a Rule 31 neutral, and Rule 31, Section 2(p) provides that such persons are required to be licensed attorneys. A binding arbitration and correspondingly, arbitrators, who do binding arbitrations, are not within the purview of Rule 31. Tennessee has adopted the *Uniform Arbitration Act at Tennessee Code Annotated Section 29-5-301 et seq.*

In response to the fourth question, it is noted that the question uses the phrase “ADR Proceedings”, which is a defined phrase at Rule 31, Section 2(n). Matters outside of this definition are not within the purview of Rule 31. Therefore, they would be non-Rule 31 matters. The subject of mediation is addressed outside of Rule 31, but within the *Tennessee Code Annotated*. An example of this is in the area of domestic relations cases. See *T.C.A. § 36-4-130; §16-20-103; §63-1-138*, for a few examples. The response to the third question would relate to this one as well.

Date: January 28, 2014



Tracy Shaw, Chair of the TARDC Ethics
Advisory Opinion Committee



Linda Nettles Harris



Virginia Story



Howard H. Vogel