

## 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