

## **Supreme Court Rule 38: Divorcing Parent Education and Mediation Fund**

**Preamble.** The Tennessee Legislature enacted Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated to promote continuing parenting arrangements for families involved in divorce, legal separation, annulment, or separate maintenance proceedings, and for families that are involved in any other custody matters.. Such arrangements reinforce the fundamental importance of the parent-child relationship to the welfare of the child. In order to help parents receive the necessary education and alternative dispute resolution services, the Tennessee Legislature established the Divorcing Parent Education and Mediation Fund (T.C.A. § 6-6-413). The Administrative Office of the Courts is charged with the distribution of the moneys in the Fund to or for the benefit of each judicial district to provide education and mediation for indigent parents and the administration of those services. The present Rule sets forth the qualifications and processes for the appointment, compensation, and payment of the reasonable expenses of alternative dispute resolution neutrals and education providers serving indigent parents involved in absolute divorce, legal separation, annulment, or separate maintenance proceedings, and any other custody matters.

**Section 1. Application.** The following Rule shall be applicable to the distribution of moneys in the Divorcing Parent Education and Mediation Fund established and funded under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated. The moneys shall be used to reimburse the providers of parenting education and alternative dispute resolution services where those services have been provided to indigent parents and to pay for the costs of administering the parenting plan law in the various judicial districts. The moneys distributed in accordance with this Rule shall come solely from those moneys in the Divorcing Parent Education and Mediation Fund.

The Administrative Office of the Courts has neither the authorization nor the means for supplementing the moneys in the Divorcing Parent Education and Mediation Fund beyond the processes set forth under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated. Upon depletion of the Divorcing Parent Education and Mediation Fund, and until additional moneys become available under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated, no further moneys will distributed under this Rule.

### **Section 2. Alternative dispute resolution services.**

**(a) Qualified Neutrals.** Qualified Neutrals are those alternative dispute resolution neutrals who meet the requirements of Tennessee Supreme Court Rule 31. Qualified Neutrals shall be selected by the parties or the court in accordance with Rule 31 and Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated.

**(b) Reimbursement.** Qualified Neutrals shall be reimbursed for those reasonable alternative dispute resolution services rendered and expenses incurred provided by court order under Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated to indigent parents.

**(c) Maximum fee.**

**(1) Services Rendered.** Qualified Neutrals who receive moneys under this Rule shall be limited to a maximum fee of \$50.00 per hour (\$25.00 per parent per hour) for time reasonably spent in

actual alternative dispute resolution sessions with the parents ("in-session time") and \$40.00 per hour (\$20.00 per parent per hour) for time reasonably spent in preparation for the alternative dispute resolution sessions and for time reasonably spent in preparing agreements or proposed agreements reached during the alternative dispute resolution sessions ("out-of-session time"), a portion of which may be reimbursed from the Divorcing Parent Education and Mediation Fund. The total number of hours that may be reimbursed from the Divorcing Parent Education and Mediation Fund shall not exceed ten (10) hours in aggregate for both in-session and out-of-session time.

**(2) Expenses Incurred.** A Qualified Neutral shall be reimbursed for certain necessary expenses incurred directly in the rendering of the alternative dispute resolution process.

(i) Expenses for long distance telephone calls, copying, printing, and travel within the state, approved by the court as reasonably necessary, will be reimbursed. Claims for reimbursement for long distance telephone calls must be supported by a log showing the date the call was made, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth (1/10) hour segments. Travel within the state will be reimbursed in accordance with Judicial Department travel regulations.

(ii) A Qualified Neutral may not be reimbursed for the services of a lawyer, other Qualified Neutral, other alternative dispute resolution neutral, paralegal, law clerk, secretary, legal assistant or other administrative assistants.

(d) Referral to alternative dispute resolution. Upon motion by either of the parties or upon its own motion, the court may refer the parties to an alternative dispute resolution process as set forth in Title 36, Chapter 6, Part 4 of the Tennessee Code Annotated.

(e) Motion for reduced fee alternative dispute resolution. At the time of referral to the alternative dispute resolution process, either party may move to pay no fee or a reduced fee for the alternative dispute resolution process. Whenever a party informs the court that such party is financially unable to afford the alternative dispute resolution process, the court may conduct a full and complete hearing as to the financial ability of the party to afford the alternative dispute resolution process, and, thereafter, make a finding as to the indigency of the party. All statements made by the party seeking to pay no fee or a reduced fee for the alternative dispute resolution process shall be by sworn testimony in open court or written affidavit sworn to before the judge. When making a finding as to the indigency of a party, the court shall take into consideration:

(1) the nature of the services to be rendered;

(2) the usual and customary charges of a Qualified Neutral in the community for rendering like or similar services;

(3) the income of the party regardless of source;

(4) the poverty level income guidelines compiled and published by the United States department of labor;

(5) the ownership or equity in any real or personal property; and

(6) any other circumstances presented to the court which are relevant to the issue of indigency.

**(f) Determination of fee reduction.** The court shall then evaluate the motion, its accompanying statement, documentation, and affidavit, and sworn testimony to determine whether the parties shall pay no fee or a reduced fee for the alternative dispute resolution process. If the court finds the party is financially able to defray a portion or all of the cost of either party's alternative dispute resolution process, the court shall enter an order directing the party to pay to the Qualified Neutral or into the registry of the clerk of such court such sum as the court determines the party is able to pay. Such sum shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon such terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances of the party.

**(g) Referral to pro bono alternative dispute resolution.** Upon determination by the court that a no fee alternative dispute resolution process is appropriate for both parties, the court shall refer the parties by an Order of the court to the clerk of the court for referral to the appropriate Legal Service office as set forth in Tennessee Supreme Court Rule 11, Section VI, to arrange for a pro bono alternative dispute resolution process. In the event there is no Qualified Neutral available for the pro bono alternative dispute resolution process, the appropriate Legal Service office shall notify the court and the court shall refer the parties to a no fee or reduced fee alternative dispute resolution process as set forth below in this Rule.

**(h) Referral to alternative dispute resolution where one party is not determined to be indigent.** Upon determination by the court that a no fee or reduced fee alternative dispute resolution process is appropriate for one party, but is not appropriate for the other party, the court shall refer the parties by an Order of the court to a Qualified Neutral, chosen by the parties or the court, for alternative dispute resolution. The court may require that the second party shall pay all or a portion of the fee of the first party as well as all of the fee of the second party to the Qualified Neutral. The Order shall be forwarded to the Qualified Neutral and it shall state the amount to be paid to the Qualified Neutral or into the registry of the clerk of such court by the each of the parties.

**(i) Referral to reduced fee alternative dispute resolution.** Upon determination by the court that a no fee or reduced fee alternative dispute resolution process is appropriate for either party, the court shall refer the parties by an Order of the court to a Qualified Neutral, chosen by the parties or the court, for alternative dispute resolution. The Order shall be forwarded to the Qualified Neutral and it shall state the amount to be paid to the Qualified Neutral or into the registry of the clerk of such court by the parties. Further, the Order shall have a claim form attached thereto for submission to the court by the Qualified Neutral for reimbursement of fees from the Divorcing Parent Education and Mediation Fund. The court shall use a claim form developed by the Administrative Office of the Courts and supplied to the court as needed.

**(j) Filing claims by the Qualified Neutral.** Upon conclusion of the alternative dispute resolution process, the Qualified Neutral shall file with the clerk of the court two (2) copies of

the completed claim form supplied to the Qualified Neutral with the Order of the court. In addition, the Qualified Neutral shall attach a copy of the Order of the court to each of the claims to be filed. The claim form shall include a listing of all in-session and all out-of-session times reasonably spent by the Qualified Neutral in the alternative dispute resolution process. The Qualified Neutral will be held to a high degree of care in the keeping of records supporting all claims and in the claim form. A Qualified Neutral who receives payment pursuant to the terms of this Rule, and who makes application for additional funds for expenses incurred and services rendered, shall report such payment in the claim form filed with the clerk of the court..

**(k) Review of the claim by the Court.** The court shall review the claim form filed by the Qualified Neutral and, upon approval of the claim form, shall forward one copy of the approved claim form and Order of the court to the Administrative Office of the Courts.

**(l) Review of the claim by the Administrative Office of the Courts.** The Administrative Office of the Courts shall examine and audit the claim form to insure compliance with these rules and other statutory requirements. After such examination and audit and giving due consideration to the Divorcing Parent Education and Mediation Fund, the Administrative Office of the Courts shall make a determination as to the compensation to be paid to the Qualified Neutral and cause payment to be issued in satisfaction thereof. The determination by the Administrative Office of the Courts shall be final.

Source AOC website at:

[http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/TNRulesOfCourt/06supct25\\_end.htm#38](http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/TNRulesOfCourt/06supct25_end.htm#38)