

**PLAN FOR ALTERNATIVE DISPUTE RESOLUTION
IN THE STATE COURTS OF TENNESSEE**

SECTION 1. INTRODUCTION

1.1 Title.

This is the Plan for Alternative Dispute Resolution (“the ADR Plan”) in Tennessee State Courts.

1.2 Purpose and Scope.

- (a) Purpose. The Purpose of the ADR Plan is to offer to civil litigants an alternative to the formal processes associated with litigation and to encourage and promote the use of alternative methods of dispute resolution to provide quicker, less expensive, and potentially more satisfying alternatives to continuing litigation, without impairing the quality of justice or the right to trial.
- (b) Scope. The ADR Plan applies to eligible civil actions pending or commenced on or after the Effective Date. The ADR Plan supplements Tennessee Supreme Court Rule 31 which shall remain in full effect.

SECTION 2. REFERRAL TO MEDIATION

2.1 Referral Process.

- (a) New or Pending Cases. Judges, in their sole discretion, are encouraged to refer new or pending cases to mediation.
- (b) Referrals. Any judicial referral shall be either: (1) Court-ordered mediation; or (2) Court correspondence encouraging the parties to voluntarily participate in a Rule 31 mediation.
- (c) Selection of Cases. Priority referrals should be given to cases in which one or more parties are self-represented. A Judge may also refer cases to mediation in which all parties have attorney representation.

2.2 Relief From ADR Referral.

- (a) Opt-Out Motions. Any party may file a motion to opt out of court-ordered mediation within fifteen (15) days of the date of an Order of Reference.
- (b) Criteria. A trial judge may grant an opt-out motion for good cause shown.

SECTION 3. MEDIATORS

- (a) Mediators. Judges are encouraged to refer cases (especially self-represented cases) to Community Mediation Centers (“Mediation Center” or “Center”) in the three grand divisions: Mid-South Community Justice & Mediation Center in Memphis, Nashville Conflict Resolution Center in Nashville, and Community Mediation Center of Knoxville in Knoxville. In addition, a Court may continue to refer cases in its jurisdiction to a Center to which it ordinarily refers cases. (List of Centers – Exhibit A).
- (b) Qualification of Mediators. A mediator conducting mediations under the ADR Plan shall be a Rule 31 Listed Mediator currently in good standing with the Alternative Dispute Resolution Commission.
- (c) Change of Mediators. If a Mediation Center selects a mediator and one or more of the parties objects to the mediator selected, the Mediation Center shall provide another mediator. Unless otherwise agreed by the parties or ordered by the Judge, each party may only exercise this option once.
- (d) Private Mediator. The parties retain the right to select by agreement a Rule 31 Listed Mediator. If a case has been referred to a Mediation Center and the parties agree upon a private mediator, they shall notify the Court and the Mediation Center.
- (e) Notice of Recusal. A mediator who discovers a circumstance requiring disqualification shall immediately notify all counsel, self-represented parties, and the Court. If the mediator was chosen by a Mediation Center, he or she shall notify the Mediation Center instead of the Court. A new mediator shall be selected by the process set forth above. In the event the parties are unable to agree upon a mediator, one will be chosen by the Court.

SECTION 4. MEDIATION PROCESS

- (a) Informal process. A Rule 31 mediation is an informal process in which a Rule 31 Listed Mediator conducts discussions among the parties to enable them to reach a mutually acceptable agreement on all or any part of disputed issues. The mediator has no decision-making authority, but will facilitate the parties’ negotiation leaving the rights of self-determination to the parties.
- (b) Compliance with Rule 31. All persons serving as mediators pursuant to the ADR Plan shall comply with the standards and procedures set forth in Tenn. S. Ct. R. 31 and will be entitled to all of the immunities and protections provided by Tenn. S. Ct. R. 31.

SECTION 5. CONFIDENTIALITY IN MEDIATION

- (a) Mediation is Confidential and Private. Evidence of conduct, information disclosed or any statement made in the course of a Rule 31 mediation is confidential to the extent agreed by the parties or provided by other law or rule of the State. There shall be no stenographic or electronic recording, audio or visual, of the mediation process. No participant or unauthorized person may make a stenographic or electronic recording, audio or visual, of the mediation process.
- (b) Communication with the Mediator. Once the mediator is assigned, the mediator may, at his or her discretion, discuss the case in confidence and *ex parte* with self-represented parties or counsel for parties. A mediator shall keep confidential from the other party any information obtained in any *ex parte* session unless the party to the *ex parte* session permits the disclosure.

SECTION 6. COMPENSATION OF MEDIATORS

- (a) Private Rule 31 Mediator's Fee. A mediator's fee shall be shared equally by all parties, unless otherwise agreed by the parties or ordered by the Court.
- (b) Community Mediation Center's Fee. Any fees of a Mediation Center shall be set by each Center.

SECTION 7. PROCEDURE FOR NOTIFYING PARTIES EITHER BY ORDER OR BY REQUEST

- (a) When a Judge orders the parties to participate in a Rule 31 mediation, the Court shall provide the parties with an Order of Reference. If referred to a Mediation Center, the Court shall send a copy of the Order and any pleadings the Court deems necessary to the Center. (Exhibit B)
- (b) When a Judge encourages the parties to voluntarily participate in a Rule 31 mediation, the Court shall notify the parties and may notify them of an available Mediation Center. The Court shall also send a copy of the referral letter to the Center. (Exhibit C)

SECTION 8. MEDIATION CENTER'S COMMUNICATION WITH PARTIES

- (a) After a referral is made, the assigned Mediation Center shall notify the parties by letter or email of the opportunity to utilize the Mediation Center's mediation

services. If a mediation is Court-ordered, the Mediation Center will proceed with the assignment of a mediator and notification of the parties by letter or email.

SECTION 9. HOW MEDIATION MAY BE CONDUCTED

- (a) Mediations may be conducted in person (physically present) or remotely, that is by use of an audio and video conferencing platform or by telephone.

SECTION 10. EVALUATION

- (a) The confidentiality of information disclosed during mediation does not prohibit or limit: (1) the Court or Mediation Centers collecting information for the purpose of evaluating the ADR Plan; (2) the Mediation Centers' use of such information for purposes of mentoring volunteer mediators; (3) the mediator filing a Mediator Report advising the Court of the outcome consistent with the provisions of Tenn. S. Ct. R. 31.
- (b) Information collected by the trial court or the Mediation Center for the purpose of evaluating the ADR Plan will be used for research and monitoring purposes only. The sources of specific information concerning the communications protected by the confidentiality provisions of Tenn. S. Ct. R. 31 will not be disclosed to the trial court or in any report.

EXHIBIT A
COMMUNITY MEDIATION CENTERS

Community Mediation Center

912 S. Gay Street, Suite L-300
Knoxville, TN 37902
(865) 594-1879
info@2mediate.org
<https://2mediate.org/>

Nashville Conflict Resolution Center

4732 W Longdale Drive
Nashville, TN 37211
(615) 333-8400
info@nashvilleconflict.org
<https://nashvilleconflict.org/>

Mid-South Community Justice & Mediation Center, Inc.

262 German Oak Drive
Memphis, Tennessee 38018
(901) 431-5660
info@cjammediation.org
<https://cjammediation.org/>

Community Mediation Services (CMS)

P.O. Box 4081
Oak Ridge, TN 37831-4081
(865) 463-6888
info@cms-tn.org
<http://www.cms-tn.org/>

VORP/Community Mediation Center

584 Highway 70 East
Crossville, TN 38555
(931) 484-0972
vorp.crossville@gmail.com

The Mediation Center (TMC)

One Public Square, Suite 10
Columbia, TN 38401
(931) 840-5583
info@columbiamediation.org
<https://www.columbiamediation.org/>

Community Mediation of East Tennessee

110 Bruce Street, Suite 204

Sevierville, TN 37862

Telephone: (865) 366-5338, ext. 10

vicki@mediate-tn.org

EXHIBIT B

Order To Conduct Mediation

IN THE _____ COURT OF
_____ TENNESSEE

Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

ORDER TO CONDUCT MEDIATION

This Court finds that this matter is appropriate for mediation under Tennessee Supreme Court Rule 31 and the ADR Plan approved by the Tennessee Supreme Court. Therefore, within ten days of entry of this Order, the parties are directed to either mutually agree upon a Rule 31 Listed Mediator to conduct the mediation or contact the following community mediation center for assignment of a mediator: _____.

Within seven days of the completion of mediation, the Mediator shall provide a Mediator Report pursuant to Rule 31, Section 5.

IT IS SO ORDERED on this ____ day of _____, 20_.

JUDGE
_____ COURT
DIVISION ____
DATE: _____

EXHIBIT C

Court Mediation Letter

[Sent on court letterhead] RE: _____

Greetings:

The Tennessee Supreme Court has approved a plan to allow judges to use a tool called mediation to help you resolve your case without going to court. Contact a Mediation Center to learn more about how mediation can help you. The Mediation Center will answer your questions about the program.

[Insert Mediation Center contact information]

Here is some helpful information about mediation:

- Mediation is an alternative to court. Mediation is an informal and private meeting. You and the other party will be able to talk about possible solutions to your case.
- You and the other party can agree to try mediation to solve your problem. The Mediation Center can assign a mediator or you and the other party can choose a Rule 31 mediator. The list of Rule 31 mediators is online at <http://www.tncourts.gov/programs/mediation/find-mediator>.
- A trained mediator will lead the mediation meeting. The mediator will help you and the other party see if it is possible to resolve the problem without going to court.
- The mediator will not make any decisions for you but will help you and the other party discuss the problem and agree on a solution.
- You don't have to do the mediation in-person. Mediation can be held remotely over the phone, by email, or by video. This means the mediation can happen at a time that works for you and the other party. This means you won't have any travel costs or have to miss work to go to mediation.
- You and the other party may be able to reach an agreement faster in mediation than if you go to court.
- Mediation is confidential and private, except the mediator is required to file a report to include who appeared and participated and whether the case was completely or partially settled.
- If you decide you do not want to mediate your case, you still have the option to go to court. If you start mediation but decide to stop before it ends, you still have the option to go to court.

- Cases that don't use mediation or cases that aren't resolved in mediation will be heard by this Court when a court date is available.

Contact the Mediation Center identified above for more information.

Thank you for learning more about mediation as a way to resolve your case.