

IN THE TENNESSEE ALTERNATIVE DISPUTES RESOLUTION COMMISSION

Advisory Opinion No.: 2019-0003

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 Larry Bridgesmith, Leslie M. Gattas, and Celeste Herbert, reviewed the request and issued the following opinion.

Question 1: Is the following considered a standing order of reference to mediation?

The current Tennessee Permanent Parenting Plan includes a box that is frequently checked stating:

V. DISAGREEMENTS OR MODIFICATION OF PLAN

Should the parents disagree about this Parenting Plan or wish to modify it, they must make a good faith effort to resolve the issue by the process selected below before returning to Court. Except for financial support issues including child support, health and dental insurance, uncovered medical and dental expenses, and life insurance, disputes must be submitted to:

- Mediation by a neutral chosen by the parents or the Court.

Response:

Yes, this is considered an Order of Reference. Once the “Mediation by a neutral chosen by the parents or the Court” **box is checked**, then the Judge will not hear the matter until the parties have been to mediation. Thus, this is an Order of Reference directing the parties to participate in a mediation.

Question 2: Are the parties required to use a Rule 31 Listed Mediator for mediation when modifying the original Parenting Plan per a court order signed by the Judge or Magistrate?

Response:

No, parties are not required to use a Rule 31 Listed Mediator when mediating a modification of a court-ordered Parenting Plan if the “Mediation by a neutral chosen by the parents or the Court” **box is not checked**. In this case, the Form does not indicate that the parents agreed to Mediation by a Rule 31 Mediator when there are Disagreements or Modifications needed to the court-approved Parenting Plan.

If the “Mediation by a neutral chosen by the parents or the Court” **box is checked**, the Parenting Plan Form allows either the parents or the Court to choose a neutral. Thus, if the parents are choosing a neutral, the parents may choose a person to serve as a mediator who is a Rule 31

Listed Mediator. If the parties are unable to agree on a neutral, then a court can select a mediator from the Rule 31 Mediator list to serve.

Question 3: Are non-Rule 31 Listed Mediators allowed to fill out Parenting Plans and other court forms if they are acting in the role of mediator in a case?

Response:

There is nothing that compels someone using or filling out the form to be a Rule 31 Listed Mediator. The Parenting Plan and other court forms are tools available to the public that can help parties, including those who are not working with a Rule 31 Listed Mediator.

References:

Rule 31, Section 2. Definitions.

(h) "Order of Reference" is a written or standing order of a Court or Judicial Officer entered in or related to an Eligible Civil Action in accordance with Section 3 herein directing the parties to participate in a Rule 31 Mediation.

(i) A "Rule 31 Mediation" is an informal process in which a Rule 31 Mediator conducts discussions among the parties that is designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of disputed issues: 1) in or related to an Eligible Civil Action; or 2) in any civil dispute in which the Rule 31 Mediator and the parties have agreed in writing that the mediation will be conducted pursuant to Rule 31.

Rule 31, Section 10. Obligations of Rule 31 Mediators

(c) During and following Rule 31 Mediations, Rule 31 Mediators shall:

...

(5) Assist the parties in memorializing the agreement of the parties at the end of the mediation. Rule 31 Mediators may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct. R. 52 and any other forms approved by the Tennessee Supreme Court.

Rule 31, APPENDIX A. Standards of Professional Conduct for Covered Neutrals
Section 10. Concluding an ADR Proceeding

(a) With Agreement.

(1) The Neutral shall request that the terms of any settlement agreement reached be memorialized appropriately and shall discuss with the participants the process for

formalization and implementation of the agreement. The Neutral may assist the parties in filling out the Parenting Plan Forms maintained by the Administrative Office of the Courts pursuant to T.C.A. 36-6-404, the Marital Dissolution Agreement as approved by the Tennessee Supreme Court under Tenn. Sup. Ct. R. 52 and any other forms approved by the Tennessee Supreme Court.

The Permanent Parenting Plan Forms are available on the Administrative Office of the Court's website here: <https://www.tncourts.gov/node/253>. This website currently states the following:

“Pursuant to Public Chapter 127, amending T.C.A. §36-6-404, the Administrative Office of the Courts developed a parenting plan form that shall be used consistently by each court within the state that approves parenting plans pursuant to §36-6-403 or §36-6-404. The form is to be used on and after July 1, 2005. The AOC is mandated to distribute this form for the use of those courts no later than June 1, 2005.”

Date Issued: _____



Larry W. Bridgesmith



Leslie M. Gattas

*Celeste H. Herbert,
signed by PM with permission*

Celeste H. Herbert