

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2019-0004

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.

Background Information:

When parent(s) or attorney(s) in the community ask about whether their mediator is a Rule 31 Listed Mediator, I direct them to <https://tncourts.gov/programs/mediation/findmediator> as that is the only place to find a complete list of current Rule 31 Listed Mediators.

There are several individuals who are advertising that they are “Rule 31 Trained”, “Rule 31 Qualified”, “Rule 31 Certified”, or even “Rule 31 Listed”, even though they are not on the Rule 31 Mediator list available at <https://tncourts.gov/programs/mediation/findmediator>. Thus, it seems they are not Rule 31 Listed Mediators. This behavior causes a lot of confusion and is in direct contravention to the following:

Rule 31, Section 14. Rule 31 Mediators

No person shall act as a Rule 31 Mediator without first being listed by the ADRC.

Rule 31, Appendix A Section 12. Advertising

All advertising by a Neutral must represent honestly the services to be rendered. No claim of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. A Neutral shall make only accurate statements about the dispute resolution process, its costs and benefits, and the Neutral's qualifications.

Question 1: Since the mediators are not Rule 31 Listed, are they subject to Rule 31?

Response:

No, those who are not Rule 31 Listed Mediators are not subject to the ethical requirements of Tennessee Supreme Court Rule 31.

Question 2: Where can parents and attorneys go to file complaints against non-Rule 31 Listed Mediators?

Response:

Since the ADRC only has authority to review complaints against Rule 31 Listed Mediators, the ADRC cannot issue discipline on non-Rule 31 Listed Mediators.

A party who would like to file a complaint against a non-Rule 31 Listed Mediator may consider contacting one of the following based on the situation:

- Tennessee Board of Professional Responsibility, if the person maintains a law license in Tennessee
- State of Tennessee Secretary of State's Office, if the complaint is regarding the Unauthorized Practice of Law
- Other licensing agencies and boards, if the person maintains any other designations or licenses with a board or agency.

Question 3:

Finally, can non-Rule 31 Listed Mediators be called as a witness against the parties since they do not have judicial immunity under Rule 31 nor is there a clause in the Agreement to Mediate that covers it?

Response:

The Committee believes this would be a judicial determination. A Judicial Officer may consider privilege, confidentiality, and other factors when determining if a mediator may be called as a witness.

The Committee suggests that the following be reviewed:

- Rules of Evidence, Rule 408 regarding Compromise and Offers to Compromise.
- Tenn. Code Ann. § 36-4-130 regarding Mediation -- Confidentiality of information and documents in the context of a Divorce.

Closing:

The Committee would like to express a deep concern for a person holding themselves out as "Rule 31 Qualified", "Rule 31 Certified", and certainly if the terminology "Rule 31 Listed" is used and the person does not maintain a Rule 31 Mediator Listing. The Committee feels this behavior is fraudulent and is strongly discouraged.

"Rule 31 Listed Mediator" is the only terminology that the ADRC finds appropriate to demonstrate you have met the qualifications of Rule 31 and are currently approved to act as a mediator by the ADRC.

While “Rule 31 Trained” may be accurate if a person attended an ADRC-approved Rule 31 Training, the ADRC cautions individuals from using any terminology that is confusing to the public. One suggestion is to use wording such as “Attended 40 hour General Civil Mediator Training with Provider A in March 2019.”

Date Issued: _____



Larry W. Bridgesmith



Leslie M. Gattas

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

Celeste H. Herbert